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IN THE

Supreme Court of the United States.

WILLIAM L. ROYALL,
v.
THE STATE OF VIRGINIA, } No. 1010.

EX PARTE ROYALL, No. 1. No. 974.

EX PARTE ROYALL, No. 2. No. 975.

CHAFFIN
v.
TAYLOR. } No. 1011.

EX PARTE WM. H. SANDS. } No. 1009.

Brief of Wm. L. Royall for Plaintiffs in Error.

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STATEMENT OF THE CASE.

The plaintiff in error is a lawyer by profession, who has been duly licensed to practice law under the laws of Virginia. The law relative to licensing attorneys, is as follows: "Any two judges chosen under the Constitution of this State may grant a license in writing to practice law in the courts of this State to any person who shall, upon examination, be found duly qualified, and who shall produce to them a certificate of the court of the county or corporation, where he has resided for one year next preceding, that he is a person of honest demeanor and over the age of twenty-one." V. C. 1873,

p. 1072. "No person shall, without a license authorised by law, practice as an attorney at law." V. C. 1873, p. 339, sec. 60. He tendered to the collector of taxes for Richmond city, the State's tax receivable coupons in payment of his revenue license, which the collector refused to receive. The collector refused to receive the coupons because two acts of the Virginia Legislature, which are specified in the record, forbade him to receive coupons in payment of license taxes.*

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*The following are the acts in question:

AN ACT

TO REGULATE THE GRANTING OF LICENSES FOR THE EXERCISE OF ANY PRIVILEGE, APPROVED FEBRUARY 7, 1884, AS AMENDED BY THE ACT APPROVED FEBRUARY 25, 1884, ENTITLED AN ACT TO AMEND AND RE-ENACT THE FIRST AND SECOND SECTIONS OF AN ACT APPROVED FEBRUARY 7, 1884, ENTITLED AN ACT TO REGULATE THE GRANTING OF LICENSES FOR THE EXERCISE OF ANY PRIVILEGE.

1. Be it enacted by the General Assembly of Virginia, That every person or firm, partnership or association, express, telegraph, telephone, and every incorporated company, which now is or may be required to obtain a license in order to do business in this State, desiring to obtain such license, shall make application therefor in writing to the commissioner of the revenue of the county or corporation wherein such business is proposed to be conducted, or the Auditor of Public Accounts, in such cases as he is authorized by law to issue a license, in which application it shall be stated the nature of the business, the residence of the applicant, the place where it is proposed to conduct such business, the amount of the assessment prescribed by law as a condition precedent to the issuing of such license, accompanied by the certificate in writing by the treasurer of the county or corporation wherein such business is proposed to be conducted, stating the said amount in gold or silver coin, United States Treasury notes or national bank notes, has been deposited with him by said applicant: provided, however, in such cases as the Auditor of Public Accounts is authorized by law to issue licenses, such deposit as herein provided for shall be made with him at the time such application is presented, instead of with the treasurer.

2. Upon the receipt by the commissioner of the revenue or auditor, as the case may be, of an application of a person or firm, partnership or company, who has complied with the foregoing section, he shall endorse said application as follows: I find the within application correct and in due form, and accompanied with the certificate in writing of the treasurer of the county or corporation, that the sum of —— dollars in gold or silver coin, or United States Treasury or national bank notes, has been deposited with the said treasurer, or that the same accompanied the application, and was deposited with the Auditor, as the case may be; to which endorsement he shall sign his name, and file said application in his office, furnishing the applicant with a duplicate copy of the same. If it shall appear

The plaintiff in error, deeming his license tax paid by the tender, continued the practice of his profession without a license. An information was thereupon filed against him in the Hustings Court of the city of Richmond. He made defence that the laws which for-

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that all the provisions of this act shall have been complied with, then the court or person having authority to grant or issue such license, may hear the application, and if in due form may grant such license: provided, that in case such license shall be refused, such refusal shall be entered upon such application, and the same returned to the applicant, who, upon presenting said application, endorsed with such refusal, to the officer with whom the deposit was made, shall have the same returned to him by the said officer.

3. When an application shall have been made and approved, and the amount assessed shall have been received by the proper collecting officer, according to the provisions of this act, and his receipt therefor, specifying in what currency such payment was made, shall be given, then, and not until then, shall it be lawful for the court, or person having authority under the law, to grant such license. The order of court, when the license is obtained in court, and the license itself, when not obtained in court, shall specify that the assessment was made according to law, and that the amount assessed had been paid in money or currency, according to the provisions of this act.

4. No application for a license to do any business, or to follow any profession, trade or calling in this State, shall be made, and if made, shall not be considered except in pursuance of this act, and no such license shall be granted, unless all the requirements of this act shall have been first complied with; and any license granted or obtained in violation of the provisions of this act shall be null and void, and the person or persons, firm or association, joint stock or incorporated company, which may obtain such license, and attempt to do business thereunder, shall be deemed to violate the law, and shall be liable to all the forfeitures, pains and penalties for such violation, and in the same manner as if no such license had been obtained, and in addition thereto fined not less than fifty dollars, nor more than five hundred dollars.

5. Any assessor, treasurer, or other officer charged with any duty pertaining to the granting of licenses, who shall violate this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars.

6. The Auditor of Public Accounts shall forthwith have prepared and furnished to commissioners of the revenue of this State blank forms of applications for licenses required to be made in writing by this act.

7. This act shall be in force from its passage.

Approved February 7, 1884.

Section 112 of the act of March 15th, 1884, is as follows:

"All applications for licenses shall be made, and all taxes assessed by chapter one of this act, shall be paid in lawful money of the United States, in the mode and subject to the provisions of an act to regulate the granting of licenses, approved the seventh day of February, 1884, and any act amendatory thereto, before

bade the officers to receive the coupons were unconstitutional and void. The court held this no defence, and he was convicted and fined $30. He applied to the Supreme Court of Appeals of Virginia for a writ of error to reverse this judgment, but it was refused, and he sued out this writ of error from this court. The action of the Hustings Court of the city of Richmond adjudging him to pay a fine, and the action of the Supreme Court of Appeals of Virginia in refusing him a writ of error and refusing to reverse the judgment of the Hustings Court of the city of Richmond, are assigned as error.

ARGUMENT.

The acts complained of in this cause are part of a series of acts designed to destroy the value of the State's tax-receivable coupons. The new funding act of February 14th, 1882, Acts 1881–2, p. 88, offers the holder of the State's $1,000-bond, bearing interest at the rate of six per cent., her new bond for $530, bearing interest at the rate of three per cent., thus, in effect, repudiating about three-fourths of the State's obligation. The 15th section of it forbids the State's officers to pay interest on any part of her debt except on those bonds issued according to its provisions, and more than a dozen statutes have been passed all aimed at making the tax-receivable coupons valueless to their owners and thus forcing them to fund under the new act. The acts under consideration are part of those passed to effect this purpose. This court said of them in *Poindexter* v. *Greenhow*, 114 U. S. p. 305 :

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any corporation, firm or person shall be entitled to receive said license, or to transact any business, profession, or calling for which a license is required by chapter one of this act."

The section of chapter 34 of the Code of 1873, referred to in the court's certificate, is as follows:

"86. Any person who shall engage in or exercise any business, employment or profession, without a license, if a license be required by law, or shall in any manner violate the license or revenue laws of the State, if no specific fine is imposed for such violation, shall pay a fine of not less than thirty dollars nor more than one thousand dollars."

The act providing the revenue license tax is set out in the brief in *Ex Parte* Royall, No. 2.

It would seem that the plaintiff in error might have been prosecuted under the provisions of section 90 of the act of March 15th, 1884, Acts 1883-4, page 596. But the court, for its own reasons, held that that act did not apply, and that the section of the Code quoted above did apply.

"Indeed, it is quite manifest, from the face of the laws themselves, that they are together but parts of a larger whole. By an act of the General Assembly of Virginia, passed February 14th, 1882, the Legislature restated the account between the State and its creditors on a basis of readjustment which reduced it to the sum of $21,035,-377.15, including interest in arrears to July 1, 1882, which was thereby declared to be her equitable share of the debt of the old and entire State, and on which it was also declared that the State was not able to pay interest for the future at a larger rate than three per centum per annum. The outstanding debt of which this was a reduction, was then classified, and bonds of the State were authorized to be issued, bearing interest at the rate of three per cent. per annum, in exchange for outstanding bonds of the different classes, scaled at rates of fifty-three per cent., sixty per cent., sixty-nine per cent., sixty-three per cent., and as to one class, as high as eighty per cent., which were to be retired and cancelled. The coupons on the new bonds were not made receivable for taxes. To coerce creditors holding bonds issued under the act of March 30th, 1871, to exchange them for these new bonds, at these reduced rates, and with them to give up their security for the payment of interest arising out of the receivability of coupons in payment of taxes, is the evident purpose of the acts of January 26th, 1882, and of March 13th, 1884, *and all together form a single scheme, the undisguised object of which is to enable the State to rid itself of a considerable portion of its public debt, and to place the remainder on terms to suit its own convenience, without regard to the obligation it owes to its creditors. The whole legislation, in all its parts, as to creditors affected by it and not consenting to it, must be pronounced null and void.*"

ALL THE ACTS CONSIDERED TOGETHER.

Let it be observed that the coupon contains two contracts—one, that the State will, on the first day of January or July, as the case may be, pay the bearer thirty dollars; the other, that if she do not, the bearer may pay her what he owes her with the coupon. If she observes her first promise and pays the coupon, no controversy can possibly arise in respect to the second. It is only when she deliberately repudiates her first engagement, that the second can come under discussion. Now, she has deliberately repudiated her first promise. The fifteenth section of her act of February 14th, 1882,

providing for funding her debt anew, forbids her officers to pay interest upon any bond except such as may be issued under the provisions of that act. The coupon holder is thus forced to resort to the subsidiary promise or else abandon his coupon. When we look to the legislation that she has adopted, that bears upon this subsidiary contract, the first thing that strikes the attention is the provision of the act of January 26th, 1882, (Acts 1881–2, p. 37), and that of the act of January 14th, 1882, (*Ib.*, p. 10), which forbid the tax collector to receive coupons for taxes until the end of a vexatious and harassing lawsuit. If these acts stood alone, the coupon holder could make no complaint of them since the decision of this court in the case of *Antoni* v. *Greenhow*. But when that case was decided, they stood alone—what they do not do now, and since they have been subsequently supplemented by other legislation which did not exist when *Antoni* v. *Greenhow* was decided, it is insisted that they may now be referred to as constituting part of one general plan which had not been unfolded at that time, the full development of which completely annihilates the coupon.

What are the subsequent and additional acts?

1st. The first section of chapter 540 (Acts 1883–84, p. 721), provides that the Second Auditor shall open an account against each bond, and whenever a coupon from that bond comes into the treasury, he shall credit the bond with what would have been paid to it as interest, if it had been surrendered and a new one taken at the rate of fifty-three cents on the dollar, bearing three per cent. interest, and the residue of that coupon shall be charged against the principal of the bond and deducted from that principal at the bond's maturity. This is, of course, intended to scare the bondholder into surrendering his bond and taking the new bond, which is really for but one-fourth of the old one.

2d. By the provisions of chapters 83, 153 and 450, pp. 120, 189 and 561, Acts 1883–'84, the payment of any license tax in coupons is absolutely prohibited under any conditions whatever. It is enacted by those statutes that license taxes shall be payable in gold, silver, and current paper money only. Thus it is attempted to exempt one-quarter of the State's revenues wholly and entirely from the operation of the coupons. This leaves nothing but the direct taxes on real and personal property for the coupons to affect.

3d. By the 65th section of chapter 450, Acts 1883–'84, p. 590, all

persons are forbidden under penalties to sell the State's coupons to her taxpayers until they have first paid her a special license tax for the privilege, of $1,000, and in addition thereto, the seller is required to pay her twenty per cent. of the face-value of the coupon sold. This is almost prohibition to selling the coupons. But it is absolute prohibition in theory, since she may make the tax more than the coupon, if she can make it anything. As the taxpayer is one person and the owner of the coupon another, it is difficult to understand how he is to get coupons with which to pay his taxes under this law.

4th. The State refuses to pay the coupon; she forbids her officers to receive it for taxes until a complicated law-suit has been ended; she thus forces a lawsuit on the coupon holder, and then requires his attorney to pay her a special license tax of $250 for the privilege of bringing the suit which she forces on the taxpayer. In other words, she claims the right to deprive him of the aid of a lawyer in the lawsuit which she forces on him.

5th. Chapter 397, Acts 1883–'84, p. 504, makes it the duty of the attorney for the Commonwealth in each county to defend every suit brought on coupons under either the act of January 14th, 1882, or that of January 26th, 1882, whether there be any defence or whether there be not; and if the decision of the case is against the State, it is made his duty to take an appeal, whether there be any grounds for an appeal or whether there be not. With the thousands of appeals thus forced into the Court of Appeals, how is it possible to make the remedies provided for available? It would take a century to hear all the appeals which the suits of one year would bring up.

6th. If the taxpayer, discouraged by these impediments, determine that he will abandon all hope of actually paying his taxes with his coupon, and stand upon his tender of it, thus using it as a barrier between the State and himself, he finds his situation no better. The act of January 26th, 1882, p. 37–38, forbids any court to grant him an injunction to restrain the State's officers from seizing his property for his tax, although he has tendered her coupons in payment of it; and the 3d section of chapter 421, Acts 1883–'84, p. 527, forbids him to sue the officer for his trespass in seizing his property after he has tendered him coupons in payment of his tax. He therefore has no redress whatever.

Thus the owner of one of the State's coupons is absolutely boy-

cotted, so far as it is within the power of the Legislature of Virginia to boycott him. Of all persons in the world, he is the only one who can claim no protection from the law, and the law places him absolutely outside of its pale. On what principle can it be shown to be a crime, so very heinous in its nature, for one of Virginia's taxpayers to own one of her coupons?

Suppose that when the State of Virginia, in 1871, was begging her creditors to release her from one-third of her debt, and take this taxpaying property of the new coupon as compensation for the release, she had told them that she reserved in her arsenal all these weapons to discharge at them when it suited her convenience so to do; how many of her bonds would have been surrendered to her? Is not the fact that she expressly reserved no right to enact this hostile legislation complete proof that she agreed with the creditor that she would enact no legislation hostile to the tax-paying quality of his coupon? Is not all this legislation inconsistent with the terms of the contract? And how can there be an implied reservation of a right inconsistent with the terms in which the contract is expressed?

Was it not the intention of the State of Virginia to destroy her coupons by this series of legislative acts? Fortunately, we are not left to conjecture or argument on this subject. Her Legislature has made two solemn declarations of its intention to do this. The Legislature which assembled in the fall of 1883 had hardly taken its seat before it enacted the following joint resolution, to be found at page 7, Acts 1883–84:

"The questions of the ascertainment and settlement of the debt of the State having for thirteen years profoundly agitated the people of Virginia, persistent, repeated, and earnest, but unavailing efforts having been made by a large body of the citizens and taxpayers of the State to effect and carry out a settlement of this debt under which a much larger sum would have been recognized and assumed by the State than has been assumed by the act approved February 14th, 1882, popularly called the 'Riddleberger Bill,' resulting in political contests which have convulsed the popular mind, given repeated and ruinous shocks to the business interests of the State, retarded the prosperity and threatened the safety of the people, and all of the issues involved in the final adjustment of this debt having at length, in 1881, and 1882, and 1883, after years of

discussion and controversy, been submitted to the arbitrament of the people and the courts, and the people having, after a thorough canvass of the questions of fact and right involved, given their sanction at the polls to the measures, modes, and principles of settlement substantially involved in the 'Riddleberger Bill,' and the highest courts of Virginia and of the United States having sanctioned the validity and the constitutionality of the law designed to give effect to the adjustment thus enacted; and it being of imperative importance to the people of Virginia, and essential to the security of the public creditors, that this settlement shall be taken as a finality, and that further agitation and controversy shall cease; therefore be it resolved by the General Assembly of Virginia—

"1. That the people of Virginia have accepted the act of February 14th, 1882, known as the 'Riddleberger Bill,' as the ultimate settlement of the debt of this State; that it is their unalterable purpose that that settlement shall be final, and that any expectations that any settlement of the debt of this State upon any other basis will ever be made or tolerated by the people of Virginia, is absolutely illusory and hopeless.

"2. That the interests of the public creditors, as well as the safety and welfare of the State, require that this settlement shall be accepted by the creditors as well as by the State, and therefore the General Assembly of Virginia, on behalf of all the people of the State, hereby advise and call upon the holders of the bonds and claims against the Commonwealth to come forward with promptness, and fund the same under the provisions of the act of February 14, 1882."

By this it is declared to be the unalterable determination of the Legislature of Virginia to force the holders of the State's coupons to surrender them to the State, or to receive nothing whatever from them. The same thing is still more shamelessly declared in the preamble to the act already referred to which provides that the coupon shall be charged up against the principal of the bond.

That preamble reads as follows:

"*Whereas it is the intention of the General Assembly, so far as they have the power, to cause the basis of settlement provided in the act entitled An Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the*

issuance of bonds covering the same, and the regular and prompt payment of interest thereon, approved February 14, 1882, *to apply alike to all the holders of the bonds of the State;* and whereas many holders of the bonds have not accepted the provisions of said act, *by reason whereof it has been impossible to prevent coupons being paid into the treasury for taxes,* the holders of the tax-receivable coupon bonds in that way enforcing the payment of a higher rate of interest than is provided by the above-recited act, Be it therefore enacted," &c.

DISCUSSION OF THE GENERAL PRINCIPLES INVOLVED IN THE CASE.

It has been argued against the right of plaintiff in error to practice his profession without a license after a tender by him of coupons, that it was his duty to submit to the mandate of the State's statute, abandon his business, remain in idleness, and sue the State's officers, either for damages in depriving him of his means of earning a living, or by way of *mandamus* to compel said officers to issue a license to him. That the violation of one law by said officers in their refusal to receive his coupons and issue him a license, gave him no right to violate the criminal laws of the State.

I make brief answer to this argument, that if it was a part of the State's contract that she would receive her coupons in payment of the license tax, then each and every one of her statutes which prohibits him from paying his license tax with coupons, and each and every one which undertakes to punish him for conducting his business without a license after he has tendered said coupons in payment of the tax, is inconsistent with her contract, and is therefore no act at all. I submit that the contract that she would receive the coupons in payment of the tax, necessarily carried with it as an incident the further contract that he who should offer to pay the State's tax with the coupons should stand in all respects upon as good and favorable a footing as he who should actually pay his license tax in gold coin and receive his license receipt therefor. In *Poindexter* v. *Greenhow*, the court says, at page 303: "The contract with Virginia was not only that the coupons should be received in payment of taxes, *but, by necessary implication, that the taxpayer making such a tender should not be molested further, as though he were a delinquent.*" This must be so, otherwise the contract that the coupon should be a good tender for a license tax is utterly valueless.

If the owner of the coupon says to the merchant about to buy his stock of goods, "Buy my coupon, tender it for your tax, and if the collector refuses it, close the doors of your store, and sue him for the damages he causes you by destroying your business," the merchant will reply, "I cannot afford to give up my business for the chance of getting compensation for it out of that officer through the verdict of a jury. The jury may estimate the value of my business far below what its real profits to me are; and besides, if they should give me full compensation for a year of inaction, still, my trade, in the meantime, will have gone off to other parties, and at the end of the year I shall have to start again as a beginner. The only advantage you offer me to induce me to buy your coupon is the difference between the market value of your coupon and the face value of the same amount of gold coin. I cannot afford to give up my business if you were to make me a present of coupons enough to pay my tax."

If he is urged to buy and then apply for a *mandamus* to make the officer give him a license, he will make the same reply. He will say, "Still, I must close my store whilst the *mandamus* proceedings are being forced to a judgment. I cannot tell how long that may be. It may require an appeal to the Supreme Court of the United States, with a delay of four years whilst the case is waiting its turn on the docket of that court. The difference between gold coin and the price at which you offer your coupon is not sufficient to pay me for lying out of my business."

There is an old case reported by Latch, at page 47, which is very analagous to the case under consideration. A. B. contracted with J. S. that J. S. might freely enter his house at his pleasure. When J. S. came to enter, A. B. took him by the sleeve, and said, "If you enter there I will pull you by the ears." The question was whether A. B.'s contract was broken, and it was held that it was. A. B.'s position was very much that now taken by the State of Virginia. When she was begging her creditor to release her from one-third of her debt she agreed with him that he might pay his license tax with the new coupons. Having secured the release, she now refuses to receive the coupons, and punishes him for pursuing his daily avocations after he has offered to pay his taxes on those avocations with the coupons that she contracted to receive for them. If the conduct

business without the paper that is called a license, which is really nothing but a written acknowledgment that I have paid my tax? I had performed the vital thing. I had paid the tax. Now, the power to punish is a power with which the State is intrusted to compel payment of the tax. But if the tax is paid, why should she be permitted to punish?

It may be said that the payment of a license tax entitles the party to do business in every county in the State, and that as the tax may be paid in one county and the party may be selling in another, the State ought to have power to compel this merchant to exhibit his license in the county in which he offers to sell, in order that her officers in that county may know that she has received her revenue. But if the merchant has done all that he can do to procure a license, why punish him for being without one? The person to punish is the delinquent officer who refuses to give him the license. But here the State first forbids the officer to furnish the license, and then undertakes to punish the merchant for being without the license. This is nothing but a claim upon the part of the State that she can, at her pleasure, force the lawyer and doctor to abandon their professions, the carpenter to close his shop, the grocer and the dry goods merchants to go out of business. If she has this power, then constitutional government is at an end, and her will is the supreme law of the land. Her power to punish would not be questioned if her statutes commanded her officers to receive coupons, and punished them for refusing the coupons, and for refusing to issue a license after tender of coupons. In that case she would undoubtedly have a right to punish. But that is not the case.

Suppose that Virginia were a great silver-producing State, and that her people were bent on establishing a monometal system of currency, which should be silver, and that, as tending in that direction, her Legislature should enact that gold coin should not be received for license taxes, and that a person conducting a business without a license, after a tender of gold coin, should be locked up in the penitentiary: could such a law be maintained? Would not the court be compelled to say that it infringed upon the circulating power of the Government's coin, and that it was therefore prohibited by the Constitution? If this be so, how can it be said that the acts under consideration do not affect the coupon-owner's power to transmit his coupon to those who wish them to pay license taxes with?

I wish to emphasize a suggestion made above—to wit: that the importance of a *license*, as it is called, is very greatly exaggerated. It is entirely out of place to speak of the paper which a business man receives when he pays the tax on his business as a license. It is no such thing. It is only a receipt for the tax. I insist that I derive my right to practice law from nature—not from my State,—and that when I have paid the State the tax which she imposes upon my business the paper which the officer gives me is in no sense a *license to practice law*, but, in its nature, nothing but an acknowledgment that my tax is paid. Those businesses which are noxious in themselves, and which the State may therefore prohibit, if she allows them to be conducted, are *licensed*, and the paper which the officer gives to a person carrying on one of these is a license. But not so of the paper which he gives to one conducting a business not noxious in itself—that is merely a receipt.

Those who maintain the constitutionality of the laws under consideration do so upon the ground, as they claim, that the citizen's right to pursue any business is a privilege that he derives from his State, and, as the State grants the privilege of doing the business, she may grant it upon her own terms, and, therefore, that she may require a prepayment of money in consideration of the grant of the privilege. I most emphatically deny this proposition.

I insist that every citizen has an inherent right, derived from nature, to earn his bread and support his family by employing such talents and energies as God has given him in any calling whatever, not inconsistent with the peace, order, morals and health of society.

This is a right inherited by every citizen at his birth, and government was instituted, not to clothe him with this right, but to protect and guard him in the enjoyment of it. Before government was framed the citizen had this right, and all citizens combined together to establish government to guarantee to each the enjoyment of it. The contrary theory is the most odious form of tyranny and autocracy.

The difference between the rights of a citizen of this free republic and those of a subject of the Czar of Russia lies just here:

In a republic the citizen is guaranteed every right not inconsistent with the peace and order of society. The subject of the Czar

of Russia has no rights at all, because his supposed rights depend upon the will of his autocrat.

It is not, and cannot be, denied that *salus populi suprema lex* is a maxim prevailing as effectually in a government operated under a written constitution as in governments which have no written constitution; so that in a government of the first sort, if the peace or health of society requires the Legislature to override an express provision of the written constitution, it is empowered to do so. This is what we call an exercise of the police power. But neither the peace, health nor good order of society calls for the exercise of the police power in this case, and the Legislature is not justified on that ground in attempting to destroy the rights of parties vested under the contract of the State.

There are certain rights which the citizen derives from the State, and those it will not be denied the State may charge money for, supposing she has not bound herself by her contract not to demand money for them. There are certain employments which are noxious and vicious in themselves—such as gaming, lottery, keeping houses of prostitution, &c.—and these employments the Legislature, under the police power, may absolutely prohibit. As it may prohibit them absolutely, so it may authorize them on its own terms. When it authorizes one of these, the right to pursue the employment is a privilege derived from the state.

These are the only privileges that the citizen derives from the State. All his other rights are rights that are inherent in him. But he has no inherent right to pursue a calling which is hurtful to society.

At this point the line is drawn between rights and privileges. Every citizen has an inalienable right to pursue any calling that is not noxious in itself. No citizen has an inherent right to pursue a calling that is noxious in itself; consequently if any citizen has a right to pursue a calling that is noxious in itself, he derives this right not from nature, but as a grant from his State; and this is a privilege.

The proposition submitted, then, is that every citizen has a right to pursue any innocuous avocation. The Legislature may regulate his enjoyment of it in the interests of the public, as, for instance, by taking proper precautions, by examinations, to keep a quack

from practicing physic or a pettifogger from practicing law, and by taxing it, and thus making the business bear a ratable proportion of the public burdens. But this is all that it can do. It cannot deprive the citizen of the right, and thus the right does not come to the citizen as a granted privilege

THEORY ON WHICH BUSINESSES ARE TAXED.

It may be pertinent to this discussion to add a few words on the theory on which businesses are taxed.

All taxation is based upon the proposition that as the law secures the property owner in the peaceful possession and use of his property, a part of that which the property produces to its owner should be yielded up to government to form a fund with which the expenses of administering the law may be defrayed, and this involves necessarily the idea of uniformity. Taxation which does not aim at uniformity is, so far as those who are doubly taxed are concerned, robbery of them. The law protects the farmer in tilling his soil and tending his flocks. It is nothing more than fair, then, that the farmer should surrender to the law a part of that which his fields and his flocks yield to him. So the law protects the merchant in negotiating and carrying out his contracts, and the lawyer and doctor in practicing their professions. It is no more than fair, therefore, that these should yield a part of their gains for defraying the expenses of administering the law. But how is the principle of uniformity to be kept in view when assessing the tax that a business must pay, considered with reference to that which is imposed upon a farm and flock? I answer that the tax which is imposed upon each must be regulated by reference to the annual yield of each. We take a farm which is worth $10,000, and we exact from it, say $50. This sum is exacted upon the theory that the farm will yield, say $1,000 of net revenue. Given that as the basis upon which this farmer is taxed, and we have then the guiding principle for imposing taxes upon all businesses.

If the farmer, whose farm yields him $1,000 per annum is required to pay $50 of tax, the lawyer, whose business yields him $1,000 per annum, should be required to pay $50 of tax, the doctor the same and the merchant the same. Any other theory of taxation is a plain violation of the principle of uniformity, and is, so far as those are

concerned to whom it is not applied, simply robbery. I do not mean to say that all taxation has this theory so constantly in view that it imposes every burden only after a rigid test of it analyzed by the standard. It is, no doubt, true that many businesses are unequally taxed, and it may be impossible to so arrange burdens as to make each bear an exact proportion to the other.

But I mean to say that every burden that is imposed must be imposed with a reference as near as may be to this elementary principle, or it violates that principle of fairness and equality upon which every government must rest, if it hopes to remain a government.

No proposition is better settled in this court than that a license charge is a tax upon the business licensed. *Brown* v. *Maryland*, 12 Wheat, 444; *Ward* v. *Maryland*, 12 Wall. 429; *Welton* v. *Missouri*, 91 U. S. R. 279.

In *Ward* v. *Maryland* the court says, speaking of a license:

"Such an exaction, called by what name it may be, is a tax upon the goods or commodities sold, as the seller must add to the price to compensate for the sum charged for the license, which must be paid by the consumer or by the seller himself, and in either event the amount charged is equivalent to a direct tax upon the goods or commodities."

If a license charge is a tax upon the business, then certainly a tender of coupons for the charge pays it, for the contract is that they shall be received in payment of "all taxes, debts, *demands and dues.*"

EX PARTE SANDS.

STATEMENT OF THE CASE.

The plaintiff in error is a lawyer by profession. He desired to pay his license tax as such with the State's tax receivable coupons. He paid the collector the amount in money and tendered him the coupons for identification and verification according to the provisions of the act of January 14th, 1882. The defendant refused to receive them because the act of February 7th, 1884, and the 112th section of that of March 15th, 1884, forbade him to receive them for any purpose. Thereupon he applied for a *mandamus* to compel the collector to receive them for identification and verification, which was

refused, and he appealed here. The action of the court refusing the *mandamus* is assigned for error, and the plaintiff prays a reversal.

ARGUMENT.

I understand the court to have decided in *Moore* v. *Greenhow*, 114 U. S. R., that licenses are payable in coupons, and that the plaintiff in error is entitled to the remedy provided in the act of January 14th, 1882. But the court did not say in terms that the act of February 7th, 1884, and the 112th section of that of March 15th, 1884, are void (both of which are certified in the record to have been drawn in question in this case and both of which are printed in the early part of this brief), and the courts of Virginia, inferior and superior, refuse to understand that the court intended to declare these laws unconstitutional, and adhere to their opinion that they are valid, and that license taxes are therefore not payable in coupons. The court is most respectfully asked to declare in terms that these acts are void, and that they constitute no barrier against the plaintiff in error paying his license tax in coupons, and that he is entitled to the remedy provided by the act of January 14th, 1882.

EX PARTE WM. L. ROYALL, No. 1.

STATEMENT OF THE CASE.

By the 65th section of the act of the Virginia Legislature of March 15th, 1884, it is provided:

"No person shall sell tax receivable coupons from bonds of the State of Virginia without a special license, for which privilege he shall pay one thousand dollars for each office or place of business kept for that purpose. In addition thereto he shall pay to the State a tax of twenty per centum upon the face value of all tax receivable coupons sold by him. At the time of making such sales, he shall give to the purchaser a printed certificate, signed by him, stating the fact that he has sold such coupons to the purchaser, naming him. The said certificate shall also contain the number and amounts of the said coupons, and the date of sale. Whenever such coupons are tendered for taxes, the broker's certificate shall be delivered to the collector. The said collector shall preserve the same until the first day of the following month, when he shall collect the said tax

of twenty per centum from the said broker. But any stock broker may purchase such coupons for the purpose of funding them in new three per centum bonds of Virginia."

The appellant, in the month of June, 1884, sold one of the State's tax receivable coupons for the sum of $10.50, current money. He sold the same as agent for Edwin Parsons, a citizen of New York, who had cut it from one of the State's bonds that belonged to him, and he remitted Parsons the amount for which it sold without deducting any commissions. He was indicted for this by the grand jury of the city of Richmond, and arrested on the indictment. He was bailed from term to term until the month of May, 1885, when he presented a petition to the Circuit Court of the United States for the Eastern District of Virginia, for a writ of *habeas corpus* to discharge him from this prosecution upon the ground that the law under which he was held impaired the obligation of the State's contract. The court refused the writ and granted him an appeal to this court. The practice in *McArdle's Case* has been followed exactly. The action of the court in refusing to award him a writ of *habeas corpus* is assigned as error.

ARGUMENT.

The learned judge, in refusing the writ, announced as his opinion that as the petitioner had acted in the matter as an agent without pay, it was the same thing as though Parsons had himself sold the coupon; that the act did not intend to affect persons selling their own coupons, but was designed to apply to brokers only. Therefore that the petitioner had only to plead in the State court that the act did not apply to him; whereupon the court would suppose that the State court would give effect to his plea and discharge him from the prosecution.

It would seem to be a sufficient answer to this argument to say that the act in its terms forbids *any person* to sell the coupons, and the State court shows that it so understands the act by instituting this prosecution against the appellant, and holding him on the indictment.

But suppose the learned judge was right in holding that the act applies to brokers only. Yet the appellant falls within its terms as effectually as any person can. A broker is an intermediary only. In this case the appellant did not sell his own coupon; he sold Par-

sons' as Parsons' agent. He was, therefore, to all intents and purposes, a broker, and, for all that the record shows, he may have twenty brokers' offices in the State of Virginia, and a license to do the general business of a broker. All that the record discloses concerning this matter is the averment of the petition that he had no license to sell coupons; and whether he could be compelled to take out a license to sell coupons, was the very question to be tried.

The only averment of the petition of which it can be predicated that the appellant was not such a broker as the statute is intended to apply to, is the statement that he acted as an agent without pay. This assumes that the statute is intended to apply only to such agents as charge commissions on the particular transaction. But it is insisted that this is not the meaning of the statute. It is intended to forbid any agent to sell another's coupons, whether he charges commissions for his services or whether he does not. The State intends to say to the broker, "I care not what relations may exist between you and your client. If you sell my coupons I require you to pay me a certain license tax, whether you charge commissions for your services or whether you do not."

And the reason is plain. Parsons and Royall the broker may have an agreement that Royall is to charge Parsons no commissions for selling his Virginia coupons, and in consideration of this, Parsons, who has a large clientage that buys and sells securities that are bought and sold in Virginia only, is to direct the traffic of this clientage to Royall's office. Under such an arrangement Royall would receive commissions for selling Parsons' coupons as effectually as though he charged a certain per cent. for each sale. It is clear, therefore, that the act intends to forbid a broker to sell coupons without first paying the special license tax, whether he charges commissions on the sale, or whether he does not. And in forbidding a *broker* to do this, it forbids any agent who acts for a third party to do it, for a broker is nothing but an agent, acting as an intermediary between two contracting parties.

Assuming then that the act is intended to apply to brokers only and not to the owners of the coupons it is just as clearly an impairment of the obligation of the contract. The assertion of a right to require the broker to pay a special license tax of $1,000 is the assertion of a right to make him pay any tax that the State may choose

to impose upon him, and is, therefore, an assertion of the right to forbid him to sell coupons at all.

Now it is insisted that the State's contract that if she did not pay the coupon at maturity the owner might sell it to her taxpayers, necessarily carried with it as an incident the further contract that if the owner was compelled to sell in order to realise, he might avail himself of the services of any one upon the ground as his agent.

Suppose one of the State's creditors to live in Canton, China, and to be the owner of one of her bonds bearing each year two $30 coupons. Is it possible that man agreed that if he had to sell his coupons, he would come all the way from Canton to Virginia, twice each year to make the sales? To state the proposition is to refute it. I have argued this matter so fully in my petition in *Ex parte* Royall, No. 2, that I feel I would be trespassing on the patience of the court to pursue the argument further here. I therefore beg to refer the court to what I have said there upon the proposition that it is not the amount of the tax that is in question, but that the State contracted she would not charge a cent. for selling coupons. What is said there relative to her contract not to charge a lawyer a cent for bringing coupon suits is just as applicable to her contract not to charge a broker a cent for selling coupons, if she, by her action, made sales necessary. I make one brief extract from that petition, applying it to this case:

"The State may undoubtedly tax the broker for exercising his calling as a broker, and because he adds to the general business of broker the particular business of selling coupons, he cannot, therefore, claim exemption from taxation. But if he will forego all other broker's business and confine himself exclusively to the business of selling coupons, then I insist that he may do this business without paying one cent's license tax; because, if the State can make him pay one cent she can charge him what she chooses, and thus disable the coupon holder to sell his coupon and thus make it valueless. It is her contract which disables her to make the charge."

EX PARTE WM. L. ROYALL, No. 2.

STATEMENT OF THE CASE.

The law of Virginia relative to licensing attorneys-at-law is as follows:

"No person shall, without a license authorized by law, practice as an attorney." V. C. 1873, page 339, sec. 60.

"Any two judges, chosen under the Constitution of this State, may grant a license in writing to practice law in the courts of this State to any person who shall, upon examination, be found duly qualified, and who shall produce to them a certificate of the court of the county or corporation where he has resided for one year next preceding, that he is a person of honest demeanor, and is over twenty-one years of age." V. C. 1873, page 1072.

This has, time out of mind, been the law of Virginia upon this subject. The appellant has been licensed to practice law under the provisions of this statute more than five years.

In addition to the above, the following has long been the statute law of the State:

"Every attorney-at-law, in addition to being licensed, sworn and admitted to prosecute or defend actions or other proceedings in the courts of this Commonwealth, on the retainer of clients, shall obtain a revenue license; and no person shall act as attorney-at-law or practice law in the courts of this Commonwealth without a separate revenue license. A revenue license to practice law in any county or corporation shall authorize such attorney to practice in all the courts of this State without an additional license." V. C. 1873, page 339, section 61.

By the 91st section of an act of March 15th, 1884, it is provided that:

"Every attorney-at-law, who has been licensed for less than five years, shall pay fifteen dollars; and on attorneys who have been licensed and practised for five years and more, twenty-five dollars."

In April, 1884, the appellant paid the State's collector of license taxes twenty-five dollars, and received from him a revenue license entitling him to practice law in all the courts of the State for one year.

The last quoted section has this additional paragraph:

"Prov'ded further, no attorney licensed under this act shall be allowed to bring suit against the Commonwealth or any treasurer or collector of taxes for the recovery of money for coupons tendered for taxes, unless he take out a special license therefor; for which privilege he shall pay a specific license tax of two hundred and fifty dollars."

After the appellant had paid his revenue license tax, he brought a suit for a client who had tendered coupons for taxes under the provisions of the act of January 14th, 1882, and who had paid his tax in money, to recover that money back. He had not paid the special license tax of $250, because he believed the act imposing it to be unconstitutional. For this he was indicted by the grand jury of the city of Richmond, and arrested.

He applied to the Circuit Court of the United States for the Eastern District of Virginia for a writ of *habeas corpus* to discharge him from imprisonment, upon the ground that he was held in violation of the Constitution, but the court refused to award the writ.

This action of the court is assigned for error. The proceedings in appealing are just what were had in the *McArdle* case.

ARGUMENT.

The court gave as its reason for refusing the writ that the proviso quoted above does not necessarily apply to coupons issued by the State under the provisions of the acts of March 30th, 1871, and March 28th, 1879, which the State contracted to receive for taxes. That it may apply to other coupons, and, therefore, under the doctrine of *ex parte Crouch*, 112 U. S. R. 178, it would not assume that the State court would hold that it applied to these tax-receivable coupons. That the petitioner should make his defence in the State court, and if it should hold the act applicable to him, he should appeal to this court.

I submit that this construction of the act cannot be maintained. It is intended to refer to suits brought to recover money from the State after coupons issued under the acts of 1871 and 1879 had been tendered for taxes. It does refer to these, and it is not intended to apply to any other coupons whatever, and it can not apply to any other. The requirement is that any attorney "who brings suit

against the Commonwealth or any treasurer or collector of taxes for the recovery of money for coupons tendered for taxes," shall pay the license tax.

Now, the State has never in her history issued any coupons as to which an attorney could "bring suit against the Commonwealth or any treasurer or collector of taxes for the recovery of money," save and except the coupons issued under the acts of 1871 and 1879. They are the only coupons that she ever made that were receivable for taxes. Any other coupons that she has ever issued were simply her bare promises to pay, and there has never been any provision of law for suing the State or any treasurer or collector of taxes to recover money after any such coupons were tendered for taxes. But there is provision of law for suing the State for "the recovery of money for coupons tendered for taxes," if the coupons were those issued under the acts of 1871 and 1879. This provision was made by the act of January 14th, 1882, (considered by this court in *Antoni* v. *Greenhow*, 107 U. S. R.) as amended, so as to apply to the coupons issued under the act of 1879, by the act of March 12th, 1884, Acts 1883–4, page 505. Therefore the requirement of a special license tax of $250 for the privilege of bringing suits against the State to recover money paid for taxes when coupons issued under either of the preceding acts had been tendered for the taxes does apply vitally to those coupons, and it does not apply to any other coupons whatever that the State may ever have issued.

The general questions involved in this case are fully argued in the petition for the writ of *habeas corpus* to which, instead of repeating that argument here, I beg to refer the court.

CHAFFIN v. TAYLOR.

STATEMENT OF THE CASE.

This case was decided in this court at the last term, and is reported in 114 U. S. R. p. 309. The mandate of the court was sent directly to the Circuit Court of Henrico county (following the practice in *Williams* v. *Bruffy*, 102 U. S.), and was entered on its records as the judgment of that court. When the case came on for trial the defendant came forward with a replication, which is in the following words:

"WM. TAYLOR ads. R. B. CHAFFIN. } In the Circuit Court of the county of Henrico.

"And the said defendant by his attorney, as to the replication of the plaintiff, says that the said plaintiff ought not to have or maintain his aforesaid action against him, because he says that at the time the said plaintiff offered to the defendant, as treasurer and collector of the taxes of the county of Henrico, in payment of the taxes of the said plaintiff for the year 1883, due the State of Virginia, a paper or instrument in print, writing or engraving, purporting to be a coupon detached from a bond of the Commonwealth of Virginia, issued under the act of Assembly, 1871, entitled 'An Act to fund the public debt,' he, the said plaintiff, demanded that the defendant should receive the same, together with a small sum of National Bank currency, in full for said taxes due by the plaintiff for the year 1883, and give him, the said plaintiff, a receipt in full discharge of said taxes. Notwithstanding the act of the General Assembly, approved January 14th, 1882, which act provides that whenever any taxpayer or his agent shall tender to any person whose duty it is to collect or receive taxes, debts or demands due the Commonwealth, any papers or instruments in print, writing or engraving, purporting to be coupons detached from bonds issued under the act of 1881, entitled 'An Act to fund the public debt,' in payment of any such taxes, debt and demands, the person to whom such papers are tendered shall receive the same, giving the party tendering a receipt stating that he has received the same for the purpose of identification and verification. He shall, at the same time, require such taxpayer to pay his taxes in coin, legal tender notes or National Bank bills, and upon payment give him a receipt for the same. In case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

"The said defendant as treasurer and tax collector for the county of Henrico, as was his duty, did, on account of said act of January 14th, 1882, refuse to comply with the demand of the said plaintiff, but was willing and ready to receive, and is still ready to receive, the said paper or instrument in print, writing or engraving, purporting to be a coupon detached from a bond of the Commonwealth, issued under the act of 1871, entitled 'An Act to fund the

public debt,' and give said plaintiff a receipt for the same for the purpose of identification and verification, at the same time receiving from the said plaintiff his taxes in coin, legal tender notes or National Bank bills, giving him a receipt for the same, as required by said act of January 14th, 1882, and for the purpose herein set forth; but the said plaintiff was not willing to comply with said act of January 14th, 1882, and did not comply with the same, as by law he was required to do, and he refusing to pay his taxes aforesaid, the defendant, as treasurer and tax collector for the county of Henrico, as was his duty under the law, proceeded to collect the taxes from the said plaintiff in the manner set forth in the plea of the defendant heretofore filed, and as provided for in said act of January 14th, 1882, and this he is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his action aforesaid against him.

"GEO. W. THOMAS, *p d.*."

The plaintiff objected to the defendant being allowed to file this replication for the reason that the decision that this court had already made precluded any such defence, but the court allowed it to be filed. The plaintiff then demurred to it, which demurrer was overruled and judgment given against the plaintiff. This action of the court is assigned as error.

ARGUMENT.

There is no question to be discussed in this case. Any question that might have been raised by the replication was disposed of by the court in its decision in *Poindexter* v. *Greenhow*.

On the argument of the case in this court the whole controversy, so far as tender was concerned, had turned upon exactly what is pleaded by the defendant in his replication.

The Attorney-General for the State had insisted that a tender of coupons, to be effectual, must be a tender of coupons, the genuineness of which had been verified by a jury, under the provisions of the act of January 14, 1882, and that in the meantime the taxpayer must pay his taxes in money, to be returned to him if his coupons should prove to be genuine, whilst the counsel for the plaintiff in

error had insisted that the tender was effectual if in point of fact the coupons were really the State's coupons, and that in the meantime the tax was paid by the tender, and the taxpayer could not be compelled to pay it over again. It is not possible to read the opinion of the court without seeing that this was exactly what the court held. It is not possible to read the opinion of the court, and close our eyes to the fact that the court intended to announce that *no act* of the Virginia Legislature could constitute a defence to her officers for levying on a taxpayer's property after a tender of what was in fact the State's coupons. The court had said:

"In the meantime, it is clear that the contract obligation embodied in the quality imparted by law to these coupons, of being receivable in payment of taxes, is a distinct, collateral, and real security placed in the hands of the creditor *intended to enable him to collect them without process of law.* As long as the annual taxes of the State are sufficient in amount to absorb all coupons that are overdue and unpaid, a certain market is created for them which will maintain them at or near their par value. In the hands of the taxpayer, who buys them for tender, they are practically no longer *choses in action*, but equal in value and quality to money AND EQUIVALENT TO RECEIPTS FOR TAXES ALREADY PAID.

Then in place after place the court iterates and reiterates the proposition that a tender of that which is really in point of fact the State's coupon pays the tax and ends the collector's power to molest the taxpayer. At one point it says:

"It is well settled by many decisions of this court that, for the purpose of affecting proceedings to enforce the payment of taxes, a lawful tender of payment is equivalent to payment, either being sufficient to deprive the collecting officer of all authority for further action and making every subsequent step illegal and void. * * * The case, then, of the plaintiff below is reduced to this: he had paid the taxes demanded of him by a lawful tender. The defendant had no authority of law thereafter to attempt to enforce other payment by seizing his property."

Again, "The State has passed no such law, for it cannot, and what it cannot do it certainly, in contemplation of law, has not done. The Constitution of the United States and its own contract, both irrepealable by any act on its part, are the law of Virginia,

and that law made it the duty of the defendant to receive the coupons tendered in payment of taxes, and declared every step to enforce the tax thereafter taken to be without warrant of law and therefore a wrong. *He stands, then, stripped of his official character, and confessing a personal violation of the plaintiff's rights, for which he must personally answer,* HE IS WITHOUT DEFENCE."

But to prevent any possible misunderstanding the court had passed upon the identical point presented by the defendant in his rejoinder. It had said:

"It is contended that, in view of this remedy, the case is ruled by the decision of this court in *Antoni* v. *Greenhow*, 107 U. S. 769. We have already shown, by extracts from the opinion of the court in that case, that the question involved in the present proceeding was not covered by that judgment. In that case the plaintiff in error was seeking to compel the officer specifically to receive his coupons in payment of taxes by *mandamus*, on the ground that he was entitled to that remedy when the contract was made by the law of March 30th, 1871. The law giving that remedy was subsequently amended, requiring the petitioner to pay the taxes in money in the first instance, and permitting the writ to issue only after a trial, in which the genuineness of the coupon tendered had been established. The court held that he might have been put to the same proof in the former mode of proceeding, and that the amendment did not destroy the efficiency of the remedy.

But here the plaintiff did not seek any compulsory process against the officer to require him specifically to receive the coupons tendered. He offered them and they were refused. He chose to stand upon the defensive and maintain his rights as they might be assailed. His right was to have his coupons received for taxes when offered. That was the contract. To refuse to receive them was an open breach of its obligation. "*It is no remedy for this, that he may acquiesce in the wrong, pay his taxes in money which he was entitled to pay in coupons, and bring suit to recover it back. His tender, as we have already seen, was equivalent to payment, so far as concerns the legality of all subsequent steps by the collector to enforce payment by distraint of his property. He has the right to say he will not pay the amount a second time, even for the privilege of recovering it back. And if he chooses to stand upon a lawful payment once made, he asks*

no remedy to recover back taxes illegally collected, but may resist the exaction, and treat as a wrong-doer the officer who seizes his property to enforce it."

There is no question to discuss in this case, and I submit it upon what has already been decided.

WM. L. ROYALL,
For Plaintiffs in Error.

SUPREME COURT, U. S.
FILED.
DEC 17 1885
JAMES H. McKENNEY,
CLERK.

In Supreme Court of the United States.

OCTOBER TERM, 1885.

RO. P. BARRY,
vs.
E. G. EDMUNDS, Treasurer of Fauquier County, Virginia. } *No. 973.*

Ex Parte Royall (No. 1) No. 974.

Ex Parte Royall (No. 2) No. 975.

Ex parte Wm. H. Sands, No. 1009.

WILLIAM L. ROYALL,
vs.
THE STATE OF VIRGINIA. } *No. 1010.*

CHAFFIN,
vs.
TAYLOR, Treasurer of Henrico Co., Va. } *No. 1011.*

BRIEFS OF ATTORNEY GENERAL OF VIRGINIA.

In Supreme Court of the United States.

OCTOBER TERM, 1885.

RO. P. BARRY,
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vs.
THE STATE OF VIRGINIA. } *No. 1010.*

CHAFFIN,
vs.
TAYLOR, Treasurer of Henrico Co., Va. } *No. 1011.*

BRIEFS OF ATTORNEY GENERAL OF VIRGINIA.

Case No. 973.

There is but one question involved in this case, and that is one of a jurisdictional character.

By the act of Congress March 3rd, 1875, it is expressly provided that the United States Circuit Court shall have jurisdiction of all cases arising under the constitution and laws of the United States "where the sum or value *in dispute*, exceeds $500.00."

Now in this case, No. 973, at bar, an action of trespass was brought in the Circuit Court of the United States, at Richmond, Virginia, by Ro. P. Barry, against E. G. Edmunds, the county treasurer of Fauquier county, Virginia,

upon this complaint, to-wit: That Barry, a tax-payer, owed the State of Virginia, $59.15 of taxes; that he tendered unverified coupons to the treasurer in payment, and the latter refused to receive them and Barry refusing to pay his taxes otherwise, the treasurer levied on a house of said Barry, alledged to be worth one hundred and twenty-five dollars. For this levy the tax-payer brought his action of trespass against the treasurer for six thousand dollars damages, in said Circuit Court.

Of course said court had no possible jurisdiction and very properly dismissed the case under said act 3rd March, 1875. See p. 7, of record for Judge Bonds order of dismissal and his reasons for the same.

The case in no aspect of the act of Congress was cognizable by said court, because:

1st. The amount of tax due, and for what the levy was made, was under five hundred dollars, it was only fifty-nine dollars and fifteen cents.

2nd. The house levied on for the payment of the tax, was of less value than five hundred dollars and was of only the value of one hundred and twenty-five dollars.

3rd. The *ad domnum* clause of six thousand dollars can not *create* a jurisdiction. This would be "*in fraudem legis.*"

It is the law that confers a jurisdiction and not the pleader by a mere averment in his declaration. Upon the the theory of plaintiff in error, he might owe Virginia one dollar of tax, an officer might levy on a pig of the value of one dollar and twenty-five cents, and by laying the damages in the declaration in trespass at an amount over five hundred dollars an august United States Circuit Court could be invoked to try such case.

"What is the matter in dispute?" asks the law. "Does it exceed the sum or value of five hundred dollars?"

These questions solve the controversy in this case. The matter in dispute must be the value of the house one hun-

dred and twenty-five dollars levied on, (or the tax) but whether the house or tax both and each are under five hundred dollars.

With these points we confidently dismiss the case No. 973, and ask an affirmation of court below.

Cases No. 974, 975, 1009 and 1010.

These four cases may well be discussed under the same head, as the principal of law underlying all, are identical.

STATEMENT.

Messrs. W. L. Royall and Wm. H. Sands are attorneys at law of the State of Virginia, and wished to exercise the privileges of attorneys at law without compliances with the law.

In each of the cases except No. 974, they sought to pay their tax as laywers in coupons, while in case No. 974. Mr. Royall wished to do the functions of a coupon broker without paying any license tax at all.

The modes of procedure by which this question is presented to this court are different, in these cases, but the *one* question in all of them is the right of the General Assembly of Virginia to require license from lawyers and brokers, and to designate and prescribe in what manner such license tax shall be paid.

The acts implicated in this controversy are as follows:

1st. An act approved February 7th, 1884, found acts 1883–4, regulating the granting of licenses for the exercise of any privilege.

2nd. Section 112 of an act of March 15th, 1884.

By these acts it is provided that before any license of any kind, for the exercise of any privilege shall be granted, that as a condition precedent, such tax shall be paid "in gold or silver coin, United States Treasury notes or National bank notes."

A fine is imposed by both of said acts for exercising any licensed privliege, without complying with said acts in paying such taxes in money.

Now the question for this court to adjudge is whether said acts are ~~valid~~ valid or not. The other side contend that said acts are in violation of the "contract clause" of the constitution of the United States, which protects the tax receivable quality of the coupons issued by the State of Virginia under her acts of 1870–1 and 1878–9, commonly known as "Funding Acts."

ARGUMENT.

We insist that the matter of license is a part of the police power of the State, and that it has never been contracted away by any Legislature or any act, and in fact could not be so contracted away.

The coupons on their face say nothing of their receivability for licenses, and doubtless it was intentionally silent on that subject, as the matter of licenses are always left to the sound discretion of the legislature courts, or the granting power. A license is not an absolute right that any citizen can claim and exercise The courts have given us definitions and explanations of the true character of *licenses* and we will now exhibit a portion of them.

"A license is a mere personal privilege, it doth extend to him to whom it is given, it is a bare permission and cannot be called a right." East Jersey Iron Company against Wright 5 Stew. Eg. (N. I.) 253.

"A license is a right given by some competent authority to do an act which *without such authority* would be illegal." North Hudson Company Ry. against Hoboken. 12 Vroom (N. I.) 75.

The object of a license is to confer a right that does not exist without a license." Chilvers vs. The People, 11 Mich. 49.

A license is not a natural right, but is a mere privlige granted by proper authority to perform or do a thing or series of things. It is a matter of indulgence at the will of the party who gives the license.

Caldwell v. Fulton, 31 Penn. St., 477; Sampson v. Burnside, 13 N. H. 265; Bridges v. Furcell, 1 Dev. and Bat. (N. C.), 496.

All the cases differentiate a license from an original, absolute, vested right, and describe it as some privilege society has conferred on man, in addition to his rights as in a state of nature.

This being the case, of course, Virginia, through her law-makers, had the constitutional power to prescribe the character of the license, and then to fix the manner in which such license should be paid for.

The coupon, as stated, does not stipulate, *in eo nomine*, that the license privileges of the State can be discharged in coupons. There is no such contract embodied in the coupons, and this court will be loth to make for Virginia a contract she has never made for herself.

The Virginia case of Sights against Yarnell, reported 12 volume of Grat Reports, page 282, is very full in its elucidation of the doctrine of State and county licenses, with their character and qualities, and from that case it will be found that the Supreme Court of Virginia has declared the legislature may prefix any kind of a condition precedent to the granting or exercising of licenses.

The license in above case was that of a "Hotel Keeper" at Wheeling (then Virginia,) and the courts sustained a law that seems burdensome and discriminating in its operation against the complaining applicant there.

The learned counsel for the plaintiffs in error, seems to argue that his right to practice law in Virginia courts, was one of those natural inherent rights that accompanied him into society, and hence no state or government can res-

trict him in its exercise. For our reply to this proposition, we refer the learned court to the Virginia case *supra*, where the court declares such license a mere "permission" on the part of the State.

The *incidents* of a license are as follows, as gathered from the adjudged cases:

1st. It is merely and simply a permission.

2nd. It is subject to and regulated by statute.

3rd. The amount paid for such license, is "a license fee," or compensation, and not a "tax" in the legal sense of the word "tax." In each state the amount paid, by way of fee, for the license, depends on the wants and necessities of the people and state.

4th It is universally admitted that each state has *full power to* enact general police regulations, and for this purpose may require persons who proposing to follow particular avocations or occupations, to first obtain a license from the proper public authorities.

5th. The license fee is imposed for the purpose of police regulation, and is intended to cover the costs to the State for issuing such license, pay her officers and reimburse herself for all expense enforcing such license law for the protection of others.

6th. The license fee is not as a tax for revenue, or if in effect it goes to swell the revenues, it is yet not a tax, as the tax on lands and personals.

7th. It is characteristic of a license that it rests wholly in the indulgence and will of the licenser and is revocable at his pleasure.

This idea is at war with the other idea that such a license fee is a tax and within constitutional limitations and the subject of contracts with creditors.

We have thus gone into an analytical discussion of this subject, as on it hinges the determination of the question at bar.

The coupon, on its face, stipulates, to be receivable in payment of all taxes, debts, demands and dues—due and owing to the Commonwealth. The license fee can be embraced in neither of above obligations.

It is, by the act, made a *condition precedent*, that the license charge shall be paid in advance, before any step, at all, can be taken, by the officer of the State, to grant a license. If it be paid in advance and, voluntarily, by the applicant, how can it be "a tax, a debt, a demand, or a due?" each of which, *ex ri termini*, imply that something has *been* done; or some consideration passed, and that for it or them, the delinquent party owes "a tax, a debt, a demand or a due."

It is a solecism to call a license charge a tax. A tax, a debt, a demand, and a due, is something that is "*owed*," that is "due," that can be "demanded," that can be "levied for," but such is not the case with the charge that is required to be paid *in advance*, as a condition precedent to the granting a license, under the acts now under review.

QUANTUM AND MEDIUM OF PAYMENT.

As to the amount to be required of a lawyer to practice law, or of a broker to either buy or sell coupons, the quantum of such charge, rests solely with the law-making power, and it must depend on the convenience or necessities of the State, and as it may be against public policy to have coupons usurp the functions of money, and thus become a medium of exchange. The Legislature may very properly impose a heavier tax on a coupon lawyer or coupon broker than upon those lawyers and brokers who engage in ordinary, legitimate business.

As to the medium or kind of thing in which the license privilege should be discharged or paid for, that is equally within the sound discretion and will of the Legislature. In primative days pelf was made a debt-paying and tax-

discharging commodity. At a later day tobacco was impressed, by law, with these attributes, and then gold and silver, and United States currency succeeded.

The laws complained of, make the issuance of licenses dependent upon the pre-payment of a specified sum in gold, silver, United States Treasury notes or National Bank notes, and, in effect, refuses to receive coupons for the same. Why could not this be so availed?

1. As stated it is not a tax, &c.

2. The coupons, nowhere, either on their face, nor by the law, declares that license fees shall be solvable in coupons, and hence the coupons have no lien on, or any receivable quality for same.

It is respectfully submitted that the late case of Moore against Greenhow, Treasurer, does not preclude the court from sustaining the foregoing views in these cases.

I will add, in conclusion, as to case (No. 1) No. 974, that there is nothing, in the law, that permits a broker to buy or sell coupons without a license, no more so, than if he should buy or sell bonds, stocks and bills of exchange, and this would seem to answer that case.

Case No. 1011.

The case of Chaffin against Taylor, Treasurer, is of simple explanation.

It is urged by the learned counsel for plaintiffs in error that the court below, the circuit court of Henrico county, Virginia, in entertaining the pleas interposed by the defendant, ignored the decision of this court in Poindexter against Greenhow, Treasurer, and it is urged that said case is conclusive of this.

When ~~Woha~~ stripped of all superfluous verbage, this case presents merely this point, that in the court below, when the case was called, the treasurer pleaded the fact that the tax-payer, Chaffin, had not verified and identified his coupons, as required by the Act, Jan. 14, 1882, of Virginia,

found Acts 1881–2, p. 10, commonly known as "Coupon-Killer No. 1." This act has never been declared unconstitutional by this court, and hence it was invoked as a defence in this case, in the court below.

Unless this court shall hold that said "Coupon-Killer No. 1" is unconstitutional, then the plea interposed by the treasurer, in the court below, was a good one.

The only argument we can make now in this case is to call the court's attention to the case of Antoni against Greenhow, from Virginia, wherein you fully sustained said act by declaring it constitutional, and such being said decision, the defendant, treasurer, pleaded the fact that the provisions of said act had not been complied with by Chaffin, when he tendered his coupons.

And now having as fully discussed these cases, in their order on the docket, I submitt hem to your honorable court for adjudication.

F. S. BLAIR,
Attorney General for Virginia.

DEC 26 1885
JAMES H. McKENNEY
CLERK

116 — 550 — 87

Supreme Court of the United States.

VIRGINIA COUPON LEGISLATION, &c.

32346

AN ACT

TO PREVENT FRAUDS UPON THE COMMONWEALTH AND THE HOLDERS OF HER SECURITIES, IN THE COLLECTION AND DISBURSEMENT OF REVENUES.

[Approved January 14, 1882.]

Whereas bonds purporting to be the bonds of this commonwealth, issued by authority of the act of March thirtieth, eighteen hundred and seventy-one, entitled an act to provide for the funding and payment of the public debt, and under the act of March twenty-eighth, eighteen hundred and seventy-nine, entitled an act to provide a plan of settlement of the public debt, are in existence without authority of law; and whereas other such bonds are in existence which are spurious, stolen, or forged, which bonds bear coupons in the similitude of genuine coupons, receivable for all taxes, debts, and demands due the commonwealth; and whereas the coupons from such spurious, stolen, or forged bonds are received in payment of taxes, debts, and demands; and whereas genuine coupons from genuine bonds, after having been received in payment of taxes, debts, and demands, are fraudulently reissued and received more than once in such payments; and whereas such frauds on the rights of the holders of the aforesaid bonds impairs the contract made by the commonwealth with them, that the coupons thereon should be received in payment of all taxes, debts, and demands due the said commonwealth, and at the same time defrauds her out of her revenues; therefore, for the purpose of protecting the rights of said bondholders and of enforcing the said contract between them and the commonwealth, and of preventing frauds in the revenue of the same:

1. Be it enacted by the general assembly of Virginia, That whenever any tax-payer, or his agent, shall tender *to any person whose duty it is to collect or receive taxes*, debts, or demands due the commonwealth, any papers or instruments in print, writing, or engraving purporting to be coupons detached from bonds of the commonwealth issued under the act of eighteen hundred and seventy-one, entitled an act to fund the public debt, in payment of

any such taxes, debts and demands, the person to whom such papers are tendered, shall receive the same, giving the party tendering a receipt stating that he has received the same for the purpose of identification and verification.

2. He shall at the same time require such tax-payer to pay his taxes in coin, legal-tender notes, or national-bank bills, and upon payment, give him a receipt for the same. In case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

3. He shall mark each paper as coupons so received, with the initials of the tax-payer from whom received, and the date of receipt, and shall deliver the same, securely sealed up, to the judge of the county court of the county, or hustings court of the city, in which such taxes, debts, or demands are payable. The tax-payer shall thereupon be at liberty to file his petition in said county court against the commonwealth. A summons to answer which petition shall be served on the commonwealth's attorney, who shall appeal to and defend the same. The petition shall allege that he has tendered certain coupons in payment of his taxes, debts, and demands, pray that a jury be empanelled to try the question as to whether they are genuine, legal coupons, which are legally receivable for taxes, debts, and demands. Upon this petition an issue shall be made in behalf of the commonwealth, which shall be tried by a jury, and either party shall have a right to exceptions on the trial, and of appeal to the circuit court and court of appeals. If it be finally decided in favor of the petitioner, that the coupons tendered by him are genuine, legal coupons, receivable for taxes, and so forth, then the judgment of the court shall be certified to the treasurer, who, upon receipt thereof, shall receive said coupons for taxes, and shall refund the money before then paid for his taxes by the tax-payer, out of the first money in the treasury, in preference to all other claims.

4. Whenever any tax-payer shall apply to any court in this commonwealth for a mandamus to compel any person authorized to receive or collect taxes, debts, or demands due the commonwealth, to receive coupons for taxes, it shall be the duty of such person to make return to said mandamus, that he is ready to receive said coupons in payment of such taxes, debts, and demands, as soon as they have been legally ascertained to be genuine, and the coupons which by law are actually receivable. Upon such return, the court before whom the application is made, shall require the petitioner

to pay his taxes to the tax-collector of his county or city, or to the treasurer of the commonwealth; and upon filing the receipt for such taxes in such court, the said court shall direct the petitioner to file his coupons in such court, which shall then forward the same to the county court of the county, or hustings court of the city, where such taxes are payable, and direct said court to frame an issue between the petitioner, as plaintiff, and the commonwealth, as defendant, as to whether the coupons so tendered are genuine coupons, legally receivable for taxes. On the trial of the cause, the attorney for the commonwealth in the lower courts, and the attorney-general in the supreme court of appeals, shall appear for the commonwealth, and require proof of the genuineness and legality of the coupons in issue. Either party shall be entitled to exceptions, and an appeal to the circuit court and supreme court of appeals on the trial of this issue. If the decision be finally in favor of the petitioner, the mandamus shall issue requiring the coupons to be received for said taxes, and so forth, and they shall be so received; and on the certificate of such judgment, the treasurer of the commonwealth shall forthwith refund to the tax-payer the amount of currency or money before then paid by him for taxes, out of the first money in the treasury, in preference to all other claims.

5. This act shall be in force from its passage.

AN ACT

TO PROVIDE FOR THE MORE EFFICIENT COLLECTION OF THE REVENUE TO SUPPORT GOVERNMENT, MAINTAIN THE PUBLIC SCHOOLS, AND TO PAY INTEREST ON THE PUBLIC DEBT.

[Approved January 26, 1882.]

1. Be it enacted by the general assembly of Virginia, That the several *tax-collectors* of this commonwealth shall receive in discharge of the taxes, license taxes, and other dues, gold, silver, United States treasury notes, national-bank currency, and nothing else: provided that in all cases in which an officer charged by law with the collection of revenue due the state, shall take any steps for the collection of the same, claimed to be due from any citizen or tax-payer, such person against whom such step is taken, if he conceives the same to be unjust or illegal, or against any statute, or to be unconstitutional, may pay the same under protest, and under such payment the officer collecting the same shall pay such revenue into the state treasury, giving notice at the time of such payment to the treasurer that the same was paid under protest. The person so paying such revenue may at any time within thirty days after making such payment, and not longer thereafter, *sue the said officer so collecting such revenue, in the court having jurisdiction of the parties and amounts.* If it be determined that the same was *wrongfully collected*, for any reason going to the merits of the same, then the court trying the case may certify of record that the same was wrongfully paid and ought to be refunded; and, thereupon, the auditor of public accounts shall issue his proper warrant for the same, which shall be paid in preference to other claims on the treasury, *except such as have priority by constitutional requirement.* There shall be no other remedy in any case of the collection of revenue, or the attempt to collect revenue illegally, or the attempt to collect revenue in funds only receivable by said officers under this law, the same being other and different funds than the tax-payer may tender or claim the right to pay, than such as are herein provided; and no writ

for the prevention of any revenue claim, or to hinder or delay the collection of the same, shall in anywise issue, either injunction, supersedeas, mandamus, prohibition, or any other writ or process whatever; but in all cases for any reason any person shall claim that the revenue so collected of him was wrongfully or illegally collected, the remedy for such person shall be as above provided, and in no other manner. In all such cases, if the court certify of record that the officer defendant acted in good faith and diligently defended the action, the necessary costs incurred by him shall be taxed to and *paid by the state*, as in criminal cases. The commonwealth's attorney for the county or corporation in which suit is brought, shall appear and represent the defence. In every case where judgment is rendered for the defendant, a fee of five dollars shall be taxed in favor of said attorney and against the plaintiff, and whenever the court shall refuse to certify the good faith and diligence of the officer defending the case, a like fee of five dollars shall be taxed against the said officer. Any officer charged with the collection of revenue, who shall receive payment thereof in anything other than that hereinbefore provided, shall be deemed guilty of a misdemeanor, and fined not less than one hundred nor more than five hundred dollars, in the discretion of the court; but nothing herein contained shall be construed to subject any officer of the state to any suit, other than as hereinbefore provided, for any refusal on his part to accept in payment of revenue due the state any kind or description of funds, security, or paper not authorized by this act.

2. This act shall be in force from and after the first day of December, eighteen hundred and eighty-two.

AN ACT

TO ASCERTAIN AND DECLARE VIRGINIA'S EQUITABLE SHARE OF THE DEBT CREATED BEFORE AND ACTUALLY EXISTING AT THE TIME OF THE PARTITION OF HER TERRITORY AND RESOURCES, AND TO PROVIDE FOR THE ISSUANCE OF BONDS COVERING THE SAME, AND THE REGULAR AND PROMPT PAYMENT OF INTEREST THEREON.

[Approved February 14, 1882.]

Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the state, it is confidently submitted as presenting a true state of the account between the state and her creditors—the account is as follows:

A STATEMENT OF THE PUBLIC DEBT OF THE STATE OF VIRGINIA.

			Interest.	Principal.
	Principal outstanding at this date:			
1861, January 1st.	Sterling debt bearing 5 per cent. interest	$1,973,000 00		
	Dollar debt bearing 6 per cent. interest	29,533,582 90		
	Debt guaranteed bearing 6 per cent. interest	294,130 00		
	Total principal			$31,800,712 90
	Interest:			
	Past due and uncalled for at this date	101,023 63		
	Maturing at this date, January 1st, 1861	944,156 38		
	Total interest		$1,045,183 01	
1863, July 1st.	The state of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were, by this partition of the old state, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.			

		Interest.	Principal.
	Principal July 1st, 1863:		
	Sterling debt bearing 5 per cent. interest	$ 1,973,000 00	
	Dollar debt bearing 6 per cent. interest	29,827,712 90	
	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02	
	Total principal July 1st, 1863		$ 33,141,212 92
	Interest July 1st, 1863:		
	Past due January 1st, 1861, and uncalled for	1,045,183 01	
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07	
	Total interest to July 1st, 1863, inclusive	$5,954,716 08	
1863, July 1st.	Two thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire state is—		
	Principal:		
	Two-thirds of $1,973,000 sterling debt	1,315,333 34	
	Two-thirds of $31,168,212 92 dollar debt	20,778,808 62	
	Total principal, two-thirds, to July, 1863, inclusive		22,094,141 96

	Interest:				
	Two-thirds of $5,954,716 08, amount in arrears at that date, inclusive		3,969,810 72		
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present state of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above		1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above	20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67			
	Total dollar bonds		17,068,358 95		
	Total principal				18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:				
	On $1,315,333 34 sterling bonds at 5 per cent		526,133 28		
	On $20,778,808 62 dollar bonds at 6 per cent		9,973,828 14		
			10,499,961 42		
	Less amount covering average time of the redemption of the $3,710,449 67 dollar bonds redeemed	445,257 58			
	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11			
			4,039,546 69		
				6,460,414 73	

STATEMENT—CONTINUED.

				Interest.	Principal.
	To which add balance on account of interest to July 1st, 1863, as above			$ 307,376 17	
	Total interest to July 1st, 1871				$ 6,767,790 90
	Principal:				
1879, July 1st. Cancelled by sinking fund commissioners in December, 1879.	Sterling bonds, as above		1,315,333 34		
	Less bonds redeemed between July 1st, 1871, and this date		42,175 77		
	Total			1,273,157 57	
	Dollar bonds, as above		17,068,358 95		
	Less bonds redeemed between July 1st, 1871, and this date		1,498,482 35		
	Total			15,569,876 60	
	Total of both classes of bonds				$ 16,843,034 17
	Interest from July 1st, 1871, to July 1st, 1879, inclusive:				
8 years	On $1,315,333 34 sterling bonds at 5 per cent		526,133 34		
	$17,068,358 95 dollar bonds at 6 per cent		7,763,804 28		
	Total to July 1st			8,289,937 62	
1882, July 1st. 3 years	Interest on $1,273,157 57 sterling bonds at 5 per cent		180,981 62		
	Interest on $15,569,876 60 dollar bonds at 6 per cent		2,802,578 79		
	Total from July 1st, 1879, to July 1st, 1882			2,983,560 41	
				11,273,498 03	

Add interest accrued to July 1st, 1871, as above		6,767,790 90	
Total		18,041,288 93	
Less amount paid between July 1st, 1871, and October 1st, 1881, in money	2,415,973 56		
in coupons	8,707,615 50		
Less amount covering average time of the redemption of the $1,540,658 12 bonds redeemed	331,800 00		
Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00		
Less tax-receivable coupons maturing in January and July, 1882	1,117,724 87		
Amount of interest (special):			
Redeemed and cancelled	380,110 02		
Total deductions		13,848,945 95	
Balance of interest to July 1st, 1882			4,192,342 98
Total debt to July 1st, 1882:			
Principal, as above			16,843,034 17
Interest, as above			4,192,342 98
Total			21,035,377 15

Including bonds held by the literary fund to the amount of $1,428,245 25, and interest on the same—in arrears July 1st, 1881, $516,322 19—and interest added from that date to July 1st, 1882, $85,694 71, making $602,016 90 included in the above sum of $4,192,342 98.

Total debt	21,035,377 15

treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal and interest. before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July. at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and the counter-signature of the second auditor, hereto affixed according to law.

——— ———, Treasurer,
——— ———, Second Auditor.

4. The form of coupon for coupon bonds shall be as follows, to-wit:

No. —— (of bond).

The commonwealth of Virginia will pay to bearer ——— dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—the first coupon to be payable January first, eighteen hundred and eighty three.

——— ———, Treasurer.

$———.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of different tint: provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore enumerated, including the bonds held by the Literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act, (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest

which may be past due and unpaid upon the same, funded bonds issued under this act may be given, dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred and seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:

No. ———.

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ——— dollars, held by ———, dated the ——— day of ———, and numbered ———, leaving a balance of ——— dollars, with interest from ———, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this ——— day of ———, eighteen ———.

——— ———, Second Auditor.

——— ———, Treasurer.

7. The said board of commissioners are empowered to issue, for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. ——. Transaction No.——.

This certificate entitles the holder hereof to the sum of ——— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved ——— day of ———, eighteen hundred and eighty-two, when presented with certificates of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this —— day of ———, eighteen hundred and eighty ———.

——— ———, Second Auditor.

——— ———, Treasurer.

The certificates so issued, shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are acquired, and by the treasurer the same shall be carefully preserved until such time as the general assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so cancelled, from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness surrendered.

10. The plates from which the bonds and fractional certificates authorized by this act are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be cancelled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them, as provided, for bonds issued under this act, when so authorized by the court having jurisdiction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

AN ACT

TO AMEND THE ACT APPROVED JANUARY 26, 1882, ENTITLED AN ACT TO PROVIDE FOR THE MORE EFFICIENT COLLECTION OF THE REVENUE, &c.

[Approved March 13, 1884.]

1. Be it enacted by the general assembly of Virginia, That an act entitled an act to provide for the more efficient collection of the revenue to support government, maintain the public schools, and to pay interest on the public debt, approved January twenty-sixth, eighteen hundred and eighty-two, be amended by the addition of the following sections:

§ 2. Whenever any papers purporting to be coupons cut from bonds of this state, shall be tendered to the collecting officer in payment of any taxes due to the state by any party desiring to bring a suit under this statute, it shall be the duty of the collecting officer to place the coupons so tendered in an envelope, to seal the said envelope, write his name across the seal thereof, endorse it with the numbers of the coupons enclosed, and return it to the tax-payer. Upon the trial of any proceeding under this act, the said coupons, enclosed in the said envelope so sealed and endorsed, must be produced in evidence to prove the tender. If the court shall certify that the money paid under protest ought to be refunded, the said coupons shall be delivered to the auditor of public accounts, to be cancelled simultaneously with the issue of his warrant.

§ 3. No action of trespass or trespass on the case shall be brought or maintained against any collecting officer for levying upon the property of any tax-payer who may have tendered in payment, in whole or in part, any coupons or paper purporting to be a coupon cut from bonds of this state for such taxes, and who shall refuse to pay his taxes in gold, silver, United States treasury notes, or national bank notes. The suit contemplated by this act shall be commenced by a petition filed at rules, upon which a summons shall be issued to the collecting officer; and the said suit shall be regularly matured like other actions at law, and the coupons tendered shall be filed with said petition.

2. This act shall be in force from its passage.

AN ACT

TO REGULATE THE GRANTING OF LICENSES FOR THE EXERCISE OF ANY PRIVILEGE.

[Approved February 7, 1884.]

1. Be it enacted by the general assembly of Virginia, That every person or persons, firm, partnership or association, express, telegraph, telephone, and every incorporated company, which now is or may be required to obtain a license in order to do business in this state, desiring to obtain such license, shall make application therefor in writing to the commissioner of the revenue of the county or corporation wherein such business is proposed to be conducted, or to the auditor of public accounts, in such cases as he is authorized by law to issue a license; in which application it shall be stated the nature of the business, the residence of the applicant, the place where it is proposed to conduct such business, the amount of the assessment prescribed by law as a precedent to the issuing of any license, and that such amount accompanies said application in gold or silver coin, United States treasury notes or national-bank notes, which application shall be signed by the applicant and filed with the commissioner of the revenue or auditor, as the case may be; but no commissioner of the revenue shall, nor shall the auditor, receive any application for assessment from any person or persons, firm, partnership or company, unless and until the foregoing requirements are strictly complied with.

2. Upon the receipt by the commissioner of the revenue or auditor, as the case may be, of an application from a person or persons, firm, partnership or company, who have complied with the foregoing section, and actually filed therewith the amount of the assessment in silver or gold coin, United States treasury or national-bank notes, he shall endorse said application as follows: I find the within application in due form, and accompanied with the sum of ——— dollars in gold or silver coin, or United States treasury or national-bank notes, to which endorsement he shall sign his name, and file said application in his office, furnishing the applicant with a duplicate copy of the same. If it appear that all the foregoing provisions of this act shall have been complied with, then the court

or person having authority to grant or issue such license, may hear the application, and if in due form, may grant such license: provided, that in case such application is refused, each refusal shall be endorsed upon said application, and the same returned to said applicant, who, upon presenting said application, endorsed with such refusal, to the treasurer with whom the deposit has been made, described in the first section of this act, said deposit shall be refunded to the applicant.

3. When an application shall have been made and approved, and the amount assessed shall have been received by the proper collecting officer according to the provisions of this act, and his receipt therefor specifying in what currency such payment was made, shall be given, then, and not until then, shall it be lawful for the court or person having authority under the law to grant such license. The order of court, when the license is obtained in court, and the license itself when not obtained in court, shall specify that the assessment was made according to law, and that the amount assessed had been paid in money or currency, according to the provisions of this act.

4. No application for a license to do any business, or to follow any profession, trade, or calling in this state shall be made, and if made, shall not be considered except in pursuance of this act, and no such license shall be granted unless all the requirements of this act shall have been first complied with; and any license granted or obtained in violation of the provisions of this act shall be null and void, and the person or persons, firm or association, joint stock or incorporated company, which may obtain such license, and attempt to do business thereunder, shall be deemed to violate the law, and shall be liable to all the forfeitures, pains, and penalties for such violation, and in the same manner as if no such license had been obtained, and in addition thereto fined not less than fifty dollars nor more than five hundred dollars.

5. Any assessor, treasurer, or other officer charged with any duty pertaining to the granting of licenses, who shall violate this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty nor more than five hundred dollars.

6. The auditor of public accounts shall forthwith have prepared and furnished to commissioners of the revenue of this state, blank forms of applications for licenses required to be made in writing by this act.

7. This act shall be in force from its passage.

AN ACT

TO AMEND AND RE-ENACT SECTIONS 1 AND 2 OF AN ACT APPROVED FEBRUARY 7, 1884, ENTITLED AN ACT TO REGULATE THE GRANTING OF LICENSES FOR THE EXERCISE OF ANY PRIVILEGE.

[Approved February 25, 1884.]

1. Be it enacted by the general assembly of Virginia, That the first and second sections of an act approved the seventh day of February, eighteen hundred and eighty-four, entitled an act to regulate the granting of licenses for the exercise of any privilege, be amended and re-enacted so as to read as follows:

§ 1. Be it enacted by the general assembly, That every person or firm, partnership or association, express, telegraph, telephone, and every incorporated company, which now is or may be required to obtain a license in order to do business in this state, desiring to obtain such license, shall make application therefor, in writing, to the commissioner of the revenue of the county or corporation wherein such business is proposed to be conducted, or to the auditor of public accounts in such cases as he is authorized by law to issue a license, in which application it shall be stated the nature of the business, the residence of the applicant, the place where it is proposed to conduct such business, the amount of the assessment prescribed by law as a condition precedent to the issuing of such license, accompanied by the certificate, in writing, by the treasurer of the county or corporation wherein such business is proposed to be conducted, stating that said amount, in gold or silver coin, United States treasury notes, or national bank notes, has been deposited with him by said applicant: provided, however, in such cases as the auditor of public accounts is authorized by law to issue licenses, such deposit as herein provided for shall be made with him, at the time such application is presented, instead of with the treasurer.

§ 2. Upon the receipt by the commissioner of the revenue or auditor, as the case may be, of an application of a person or firm, partnership or company, who has complied with the foregoing section, he shall endorse said application as follows: I find the within

application correct and in due form, and accompanied with the certificate, in writing, of the treasurer of the county or corporation, that the sum of ——— dollars, in gold or silver coin, or United States treasury or national bank notes, has been deposited with the said treasurer, or that the same accompanied the application and was deposited with the auditor, as the case may be, to which endorsement he shall sign his name and file said application in his office, furnishing the applicant with a duplicate copy of the same. If it shall appear that all the provisions of this act shall have been complied with, then the court or person having the authority to grant or issue such license, may hear the application, and if in due form, may grant such license: provided that in case such license shall be refused, such refusal shall be entered upon such application, and the same returned to the applicant, who, upon presenting said application, endorsed with such refusal, to the officer with whom the deposit was made, shall have the same returned to him by the said officer.

2. This act shall take effect from its passage.

Sections 112, 113, and 114,

OF

CHAPTER 450, ACTS 1883-84.

112. All applications for licenses shall be made, and all taxes assessed by chapter one of this act, shall be paid in lawful money of the United States, in the mode and subject to the provisions of an act to regulate the granting of licenses, approved the seventh day of February, eighteen hundred and eighty-four, and any act amendatory thereto, before any corporation, firm, or person shall be entitled to receive said license or to transact any business, profession, or calling, for which a license is required by chapter one of this act.

113. All taxes assessed on property, real or personal, by this act, and by it dedicated to the maintenance of the public free schools of the state, shall be paid and collected only in lawful money of the United States, and shall be paid into the treasury to the credit of the free-school fund, and shall be used for no other purpose whatsoever. And to this end the auditor of public accounts shall have the books of the commissioners of the revenue prepared with reference to the separate assessment and collection of said school tax, and the several treasurers of the commonwealth shall have the tax bills in their counties or corporations so made out as to specify the amount of tax due from each tax-payer to the said public free-school fund, including the capitation tax and school taxes of whatever kind or nature, and to keep said capitation tax and school taxes separate and distinct from all other taxes or revenues so collected by him, and forward the same, thus separate and distinct, to auditor of public accounts, which shall be kept separate and distinct by him from all other taxes or revenues until paid to the public free schools.

114. The act approved April the twenty-second, eighteen hundred and eighty-two, entitled an act for the assessment of taxes on persons, property, income, licenses, and so forth, and imposing taxes thereon for the support of the government and free schools and pay the interest on the public debt, and all other acts and parts of acts inconsistent with this act, are hereby repealed.

Sections 7, 8, and 9

OF

CHAPTER 43, CODE 1783.

7. All moneys to be paid into the treasury of this state, shall be paid by the person liable to pay the same, or his agent, into one of the banks in the city of Richmond, in the following manner: A warrant shall be obtained from the auditor of public accounts, or the second auditor, as the case may be, directing the treasurer to receive the sum to be paid; the treasurer shall, by his order upon the said warrant, require the cashier of one of the said banks to receive the sum therein mentioned; and upon receiving the same, the proper officer of the bank shall give a certificate on the same warrant that the said sum has been paid into such bank to the credit of the treasurer. Upon the return of the warrant, order, and certificate, the treasurer shall give a receipt for the sum so paid; and upon the same being delivered to the auditor who may have issued the warrant, he shall grant a receipt therefor.

8. Any person bound to pay money into the public treasury, who shall pay the same otherwise than according to the preceding section, shall remain liable for such money, and be subject to every fine, forfeiture or penalty to which he would have been subject if he had not paid the same.

9. All moneys paid into bank according to the seventh section shall stand on the books of the bank to the credit of the treasurer of the state. But the treasurer shall have no authority to draw any of the said money except by his check drawn upon a warrant issued by one of the auditors. If any money in bank to his credit, as aforesaid, shall be paid otherwise than upon his check drawn upon such warrant, the payment shall not be valid against the commonwealth.

116-550

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—IN THE—

Supreme Court of the United States.

ROBERT P. BARRY
v.
E. G. EDMUNDS. } No. 973.

EX PARTE: ROYALL (No. 1), No. 974.

EX PARTE: ROYALL (No. 2), No. 975.

EX PARTE: SANDS, No. 1009.

WILLIAM L. ROYALL
v.
THE STATE OF VIRGINIA. } No. 1010.

CHAFFIN
v.
TAYLOR. } No. 1011.

Briefs of Counsel for Defendants in Error.

Walter R Staples
R A Ayres Atty Gen't, Va

—IN THE—

Supreme Court of the United States.

ROBERT P. BARRY
vs.
E. G. EDMUNDS. } No. 973.

In Error to the Circuit Court of the United States for the Eastern District of Virginia.

STATEMENT.

This was an action of trespass on the case instituted by Robert P. Barry against E. G. Edmunds, both citizens of Fauquier county, Virginia. Barry alleges that he was a tax-payer in said county, and owed the State of Virginia a tax-bill, amounting to the sum of $59.15, which was past due, and subject to be levied for pursuant to law; that the defendant is the treasurer of Fauquier, and charged with the duty of collecting the taxes due the State in that county; that plaintiff tendered the defendant, as treasurer, coupons receivable for taxes clipped from bonds of the State, issued pursuant to law, and lawful money of the United States, which together amounted to the exact sum due; that the defendant refused to receive said coupons and money in payment of the tax-bill, and maliciously levied upon plaintiff's horse, of the value of one hundred and twenty-five dollars, and sold it for said taxes; that the defendant intended to intimidate the plaintiff and make him afraid

to rely on the constitution of the United States and the judicial powers thereof for protection—intended to make an example of him, &c.

The above are the material allegations of the declaration which concludes with the usual allegation of "other wrongs," &c., laying his damages at six thousand dollars.

The defendant in error filed a plea to the jurisdiction of the circuit court, and upon a motion made by the plaintiff to set a day for argument of the demurrer to the plea, the court, being of opinion that the matter in dispute did not exceed, exclusive of costs, the sum or value of five hundred dollars, and that if the jury were to award a verdict for five hundred dollars, such verdict would be set aside as excessive, dismissed the suit pursuant to the act of Congress, approved March 3, 1875, "to determine the jurisdiction of the circuit courts," &c.

From this judgment the plaintiff appeals, and assigns the dismissal as error.

ARGUMENT.

We maintain the following propositions:

1st. That in determining the question whether a suit *does really and substantially involve a dispute or controversy properly within the jurisdiction of the court*, it may look to the whole record, and is not bound by the amount of damages laid in the declaration.

2. That this principle applies in actions *ex delicto*, although malice is alleged where the facts shown by the record satisfy the court that, by no reasonable intendment, could the damages claimed necessarily result.

3. That the pleadings admit the facts alleged in the declaration, and the court, in the exercise of a sound legal discretion, rightfully considered those facts in arriving at a conclusion upon the question of jurisdiction.

4. That to sustain the jurisdiction here, the court must decide that the facts alleged in the declaration do not satisfy it, that the amount or value really and substantially involved in controversy in the circuit court was less than five thousand dollars.

5. That the declaration shows upon its face that the damages laid are entirely out of proportion to the injury sustained according to the facts alleged, and must be treated as colorable, and the averment as having been made for the purpose of inducing the court to assume a jurisdiction that did not really and substantially exist.

The first proposition is supported by the cases of Lee vs. Watson, 1 Wall. 337; Shacker vs. Hartford Fire Insurance Co., 93 U. S. 241; Gray vs. Blanchard, 97 U. S. 564; Tintsman vs. National Bank, 100 U. S. 6; Banking Association vs. Insurance Association, 102 U. S. 121, and Hilton vs. Dickinson, 108 U. S. 165.

The case of Lee vs. Watson, *supra*, was an action of assumpsit upon a promissory note for $610.00, with three other counts—$1,000 for money due on account, $1,000 for goods sold and delivered, and $1,000 for money had and delivered, and the damages were laid at $2,100.

The circuit court, with hesitation, allowed an appeal certifying that the amount in controversy did not exceed $1,000.

The court said "To authorize a re-examination of a final judgment of the circuit court, the matter in dispute must, with some exceptions, exceed the sum or value of $2,000. By matter in dispute is meant the subject of litigation, *the matter for which the suit is brought*, and upon which issue is joined, and in relation to which jurors are called and witnesses examined."

"It certainly would not be pretended that this court would hear a case where the plaintiff counted solely upon a promissory note of $200, simply because he concluded his declaration with an averment that he had sustained damages from its non-payment of over $2,000, and prayed judgment for the latter sum."

Shacker vs. Hartford Fire Insurance Co., *supra*, was an action of assumpsit upon a policy of insurance for $1,400, with two counts, and damages laid at $3,000. Following Lee vs. Watson the case was dismissed.

In Gray vs. Blanchard, *supra*, the court, Mr. Chief Justice Waite, dismissing the case for want of jurisdiction, said: "While in the absence of anything to the contrary, the prayer for judgment by the plaintiff in his declaration or complaint upon a demand for money only * * * * * will be taken as indicating the amount in dispute. Yet, if the actual amount in dispute does otherwise appear in the record, reference may be had to that for the purpose of determining our jurisdiction. * * * * We hear the case upon the record which is sent up, and, if taking the whole record together, it appears that we have no jurisdiction, the case must be dismissed."

Banking Association vs. Insurance Association, 102 U. S. 121, following the above cases, is dismissed for want of jurisdiction.

In Hilton vs. Dickinson, 108 U. S. 165, Mr. Chief Justice Waite,

delivering the opinion of the court, reviewing all the cases bearing upon the question of jurisdiction growing out of the amount involved in controversy, said: "We understand that Wilson vs. Daniel is overruled by Gordon vs. Ogden, in which Chief Justice Marshall states the opinion of the court to be that 'The jurisdiction of the court depends upon the sum in dispute between the parties as the case stands upon the writ of error,' and that Wilson vs. Daniel was not followed 'because a contrary practice had since prevailed.' It is undoubtedly true, that until it is, in some way shown by the record that the sum demanded is not the matter in dispute, that sum will govern in all questions of jurisdiction; but it is equally true that when it is shown that the sum demanded is not the real matter in dispute, the sum shown, and not the sum demanded, will prevail." The Chief Justice says further: "In this connection it is to be remarked that *the amount as stated in the body of the declaration, and not merely the damages alleged, or the prayer for judgment at its conclusion must be considered,* in determining whether this court can take jurisdiction." Again he says: "It is the actual matter in dispute, as shown by the record, and not the *ad damnum* alone, which must be looked to."

The above cases clearly establish the principle contended for as applied to actions *ex contractu.* Let us, therefore, enquire what prevents the application in a proper case in an action *ex delicto.*

Damages are given as a compensation, recompense or satisfaction to the plaintiff, for an injury actually sustained by him from the defendant. They should be precisely commensurate with the injury, neither more nor less.—*Greenleaf on Evidence* 2 *Vol.* § 253 *and note; Field on Damages,* § 768 *and note.*

Damages which necessarily result are termed *general damages,* being shown under the *ad damnum,* or general allegation of damages. The defendant must be presumed to be aware of the necessary consequences of his act, and therefore cannot be taken by surprise in the proof of them. But where the damages, though the *natural* consequences of the act complained of are not the *necessary* result of it, they are termed special damages; which the law does not imply; and, therefore, in order to prevent a surprise upon the defendant, they must be particularly specified in the declaration, or the plaintiff will not be permitted to give evidence of them at the trial.—2*nd Greenleaf on Evidence,* §254. Pestine vs. Sheperson, 17 Grat. 472.

In this case no special damage is sufficiently alleged in the declara-

tion, and the facts furnish a measure for the general damages, almost as accurate as in the cases growing out of contract recited above.

In Conrad vs. The Pacific Insurance Co., 6 Peters, 262, the opinion discusses fully the principles applicable to cases of injury to personal property, and sustains the charge of the circuit court from which we freely quote:

"The rule which ought to govern jurors in assessing damages for injuries to personal property, depends much upon the circumstances of the case. When a trespass is committed in a wanton, rude and aggravated manner, indicating malice or a desire to injure, a jury ought to be liberal in compensating the party injured, in all he has lost in property, in expenses for the assertion of his rights, in feeling or reputation; and even this may be exceeded by setting a public example to prevent a repetition of the act. In such cases there is no certain fixed standard; for a jury may properly take into view not only what is due to the party complaining, but to the public, by inflicting what are called in law speculative, exemplary, or vindictive damages. But when an individual, acting in pursuance of what he conceived a just claim to property, proceeds by legal process to enforce it, and causes a levy to be made on what is claimed by another, without abusing or perverting its true object, there is and ought to be a very different rule, if, after due course of legal investigation, his case is not well founded. This is what must necessarily happen in all judicial proceedings fairly and properly conducted, which are instituted to try contested rights to property. The value of the property taken, with interest from the time of the taking down to the trial, is generally considered as the extent of the damages sustained, and this is deemed legal compensation, which refers solely to the injury done *to the property taken*, and not to any collateral or consequential damages *resulting to the owner* by the trespass. These are taken into consideration only in a case more or less aggravated. But when the party taking the property of another by legal process, acts in the fair pursuit of his supposed legal right, the only reparation he is bound to make to the party who turns out ultimately to be injured, is to place him, as to the property, in the situation in which he was before the trespass was committed. The costs of the action are the only penalty imposed by the law, which limits and regulates the items and amount. In the present case the defendant acted under the orders of the government, in the execution of his duties as a public officer; he made the levy, but committed no

act beyond the strictest line of his duty, which placed him in a situation where he had no discretion. The result has been unfortunate for him; he has taken the property of the plaintiff for the debt of Edward Thompson, and must make them compensation for the injury they have sustained thereby, but no further."

The charge of the court in the above case would indicate that a jury may exceed the amount of compensation, and inflict exemplary or vindictive damages; but that question did not arise, and it is not entitled to the weight of an express decision on the point.

Ballister & Tracy vs. Swartwout, 10 Peters, 80, was an action of trover against a collector of the revenne for certain casks of syrup which had been detained by the collector for a higher duty than was lawful, until it deteriorated in value. The circuit court instructed the jury that the collector should not be subjected to more than nominal damages. This court reversed the judgment of the circuit court, and held that the plaintiff was entitled to the damages he had actually sustained. There was no occasion to pass upon the question of exemplary damages, as it was not an issue.

The authorities cited sustain the principle that in all actions *ex delicto* for injury to, or the taking of, personal property, without malice, that the real value of the subject in controversy in the former, and the value of the property taken or injured, with interest in the latter, is the true test of juri-diction, and not the *ad damnum*.

Now, does the allegation of malice and a bad intent or motive in the declaration prevent the exercise of any judicial discretion by the court upon the facts alleged therein? If so, it would become necessary for the court to submit the most trivial cases to a jury upon the mere allegation of malice, because few courts would care to enter into the question of damages for a trespass to property upon affidavits and counter affidavits.

Whenever the pleader chose to do so, he could, therefore, force the court to substantially try the cause, although it might be dismissed or remanded during the course of the investigation.

It is very apparent that it is difficult to lay down any general rule that governs in all actions of malicious trespass to property.

There may, and doubtless will, arise cases in which the court would not be warranted in withholding its jurisdiction, and upon the trial appear that it had none.

But we submit that in all cases where the record discloses facts from

which the court may, in the exercise of a sound discretion, determine that it has no jurisdiction, it should proceed no further but dismiss the suit.

This case comes within the above rule. Here the pleader has given the court to understand the true nature of the transaction, the true value of the property taken, and that the defendant acted as an officer of the State, under color of authority derived from acts of the General Assembly of the State; and the sale is one pursuant to the requirements of law regulating sales of property seized for delinquent taxes. No irregularity is alleged, and there is no special circumstances in aggravation.

The opinion of the court in Smith vs. Greenhow, 109 U. S. 669, does not controvert the principle contended for here. The court there (no question having been raised as to the jurisdiction upon that point) said, *obiter* and by way of suggestion, that if the court had found, as a matter of fact, that the amount of damages stated in the declaration was colorable, and had been laid beyond the amount of a reasonable expectation of recovery, for the purpose of creating a case removable under the act of Congress so that it appeared that the suit did not really and substantially involve a dispute or controversy properly within the jurisdiction of the circuit court, that the order remanding it to the State court could have been sustained.

Here it does appear as a matter of fact from the record that the amount in controversy can, by no reasonable mode of computation, exceed $500, and the *obiter dictum* in Smith vs. Greenhow, *supra*, where the point was not raised, discussed or decided, will not be held as authoritative upon the question.

Smith vs. Luce, 14 Wend. 237, does not warrant the assumption of plaintiff. The statute there required the *facts and circumstances* to be set out in affidavit, which was not done, the plaintiff only averring his belief as to the *conclusion* which the *facts and circumstances* should have shown. The court held that the omission to set forth the *facts and cirucmstances* was error.

In Oelrich vs. Spain, 15 Wall. 211, cited by plaintiff, the only question decided by the court was that fees of counsel could not be included in the damages awarded for the breach of the condition of an injunction bond. No point arose for decision involving the question of vindictive or exemplary damages.

In Milwaukee R. R. Co. vs. Arms, 9 U. S. 489, the court awarded

a new trial, because of excessive damages, holding that damages must be by way of compensation.

This court has not directly passed upon the question as to whether vindictive or exemplary damages should be awarded.

The rule stated by Mr. Greenleaf is most consonant with reason and justice, and the damages should always be in compensation.

Can the court say that more than $500 was in dispute in the circuit court?

Can the court say that more than five thousand dollars is involved in the suit here?

We confidently assert that it cannot, and the appeal must be dismissed.

Walter R Staples
R A Ayres, Atty Genl of Va

EX PARTE: WM. L. ROYALL, No. – } No. 974.
EX PARTE: WM. L. ROYALL, No. 2 } No. 975.

Appeal from and in Error to the Circuit Court of the United States for the Eastern District of Virginia.

STATEMENT.

The same question is involved in both of the above cases.

In No. 1, the plaintiff sold coupons without first having obtained the license required by law, and was indicted in the hustings court of the city of Richmond, and held for trial.

In No. 2, the plaintiff, being a lawyer, brought a suit for the recovery of money for coupons tendered for taxes, without first having obtained the license required by law. He was indicted for this in the hustings court for the city of Richmond, arrested and held for trial.

The plaintiff in both cases applied to the Circuit Court of the Eastern District of Virginia, by petition, for a writ of *habeas corpus* to discharge him from imprisonment. The court being of opinion that it was without jurisdiction to discharge the petitioner from said prosecution, dismissed the petition in each case. The plaintiff was granted an appeal in both cases.

ARGUMENT.

This court has no jurisdiction of the appeals from the circuit court for refusal to grant the writ of habeas corpus prayed for in plaintiff's petition.

Ex parte McCardle, 6th Wall. 318, which plaintiff cites, was upon a motion to dismiss an appeal prosecuted by McCardle from the judgment of the Circuit Court for the District of Mississippi refusing to discharge him from imprisonment upon a writ of *habeas corpus*. McCardle was held for a violation of the reconstruction acts of Congress. The appeal had been taken pursuant to the act of Congress of February 5th, 1867, 14 Stat. at Large, 385, to amend the judiciary act of 1789, which provides:

"SEC. 1. That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdiction, in addition to the authority already conferred by law, shall have power to grant writs of *habeas corpus* in all cases where any person may be restrained of his or her liberty in violation of the constitution or of any treaty or law of the United States."

After providing for the awarding, direction, serving and return of the writ, and for the hearing, &c., the act proceeds:

"From the final decision of any judge, justice or court *inferior to the circuit court*, appeal may be taken *to the circuit court* of the United States for the district in which said cause is heard, and *from the judgment of said circuit court to the Supreme Court of the United States.*"

The judiciary act of 1789, to which the above act was supplemental, enacts:

"That either of the justices of the supreme court as well as judges of the district courts, shall have power to grant writs of *hapeas corpus*, for the purpose of enquiry into the cause of commitment: *Provided*, That writs of *habeas corpus*, shall in no case extend to prisoners in jail, unless where they are in custody under or by color of the authority of the United States, or are committed for trial before some court of the same, or are necessary to be brought into court to testify."

Under the provisions of the acts recited, the court held that the appeal had been properly allowed, and denied the motion to dismiss.

Subsequent to the denial of the motion to dismiss the case was argued and submitted, and whilst it was held under advisement and before

conference, Congress passed the act of March 27, 1868 (15 Stat. at Large, 44), which was as follows:

"*And be it further enacted,* That so much of the act approved February 5, 1867, entitled, An act to amend an act to establish the 'Judicial Courts of the United States, approved September 4, 1789,' as authorized an appeal from the judgment of the circuit court to the Supreme Court of the United States, or the exercise of any such jurisdiction by said supreme court, on appeals which have been, or may hereafter be taken, be, and the same is hereby ~~repealed~~ repealed."

The Constitution of the United States ordains as follows:

"§ 1. The judicial power of the United States shall be vested *in one supreme court,* and in such inferior courts as the Congress may from time to time ordain and establish."

"§ 2. The judicial power shall extend to all cases in law or equity arising *under this* constitution, the laws of the United States, &c."

And in these last cases the constitution ordains that

"The supreme court shall have appellate jurisdiction, both as to law and fact, *with such exceptions and under such regulations as the Congress shall make.*"

Chief Justice Chase delivered the opinion of the court.

"The first question necessarily is that of jurisdiction; for, if the act of March, 1868, takes away the jurisdiction defined by the act of February, 1867, it is useless, if not improper, to enter into any discussion of other questions.

"It is quite true, as argued by the counsel for the petitioner, that the appellate jurisdiction of this court is not derived from acts of Congress. It is, strictly speaking, conferred by the constitution. But it is conferred 'with such exceptions and under such regulations as Congress shall make.'

"It is unnecessary to consider whether, if Congress had made no exceptions and no regulations, this court might not have exercised general appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the first Congress, at its first session, was the act of September 24th, 1789, to establish the judicial courts of the United States. That act provided for the organization of this court, and prescribed regulations for the exercise of its jurisdiction.

"The source of that jurisdiction, and the limitations of it by the constitution and by statute, have been on several occasions subjects of consideration here. In the case of *Durousseau* v. *The United States*

[6 Cranch, 312] particularly, the whole matter was carefully examined, and the court held that while 'the appellate powers of this court are not given by the judicial act, but are given by the constitution,' they are, nevertheless, 'limited and regulated by that act, and by such other acts as have been passed on the subject.'" The court said further, that the judicial act was an exercise of the power given by the constitution to Congress "of making exceptions to the appelate jurisdiction of the supreme court." "They have described affirmatively," said the court, "its jurisdiction, and this affirmative description has been understood to imply a negation of the exercise of such appellate power as is not comprehended within it."

The principle that the affirmation of appellate jurisdiction implies the negation of all such jurisdiction not affirmed having been thus established, it was an almost necessary consequence that acts of Congress, providing for the exercise of jurisdiction, should come to be spoken of as acts granting jurisdiction, and not as acts making exceptions to the constitutional grant of it.

The exception to appellate jurisdiction in the case before us is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of *habeas corpus*, is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to enquire into the motives of the Legislature. We can only examine into its power under the constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We cannot doubt as to this. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle."

In *ex parte* Crouch, 112 U. S. 178, which was a motion for leave to file a petition for a writ of *habeas corpus*, Chief Justice Waite, after reciting the statements of the petition, says:

"The petitioner is, therefore, in the custody of a State court of competent jurisdiction, and held for trial upon an information for violating a criminal statute of the State. He seeks to be discharged by habeas

corpus, not because, if guilty of the charge which has been made against him, the court is without jurisdiction to hold him for trial, and to convict and sentence him, but because, as he alleges, he has a valid defence to the charge, which grows out of a provision in the Constitution of the United States, and, for this reason, he insists he is detained in violation of the constitution. It is elementary learning that, if a prisoner is in the custody of a State court of competent jurisdiction, not illegally asserted, he cannot be taken from that jurisdiction and discharged on habeas corpus issued by a court of the United States, simply because he is not guilty of the offence for which he is held. All questions which may arise in the orderly course of the proceedings against him are to be determined by the court to whose jurisdiction he has been subjected, and no other court is authorized to interfere to prevent it. Here the right of the prisoner to a discharge depends alone on the sufficiency of his defence to the information under which he is held. Whether his defence is sufficient or not is for the court which tries him to determine. If in this determination errors are committed, they can only be corrected in an appropriate form of proceeding for that purpose. The office of a writ of habeas corpus is neither to correct such errors, nor to take the prisoner away from the court which holds him for trial, for fear, if he remains, they may be committed. Authorities to this effect in our own reports are numerous. *Ex parte Watkins* 3, Pet. 202; *Ex parte Lange*, 18 Wall. 163, 166; *Ex parte Parks*, 92 U. S. 18, 23; *Ex parte Siebold*, 100 U. S. 371, 374; *Ex parte Virginia*, Id. 339, 343; *Ex parte Rowland*, 104 U. S. 604, 612; *Ex parte Curtis*, 106 U. S. 371, 375; *Ex parte Yarbrough*, 110 U. S. 651, 653.

Ex parte Royall, 112 U. S. 178, was a motion for leave to file a petition for a writ of *certiorari*, to bring up the record and review the action of the circuit court in refusing to discharge the petitioner from the custody of the hustings court of the city of Richmond, under a writ of *habeas corpus*.

Chief Justice Waite, delivering the opinion of the court, said:

"This court has no jurisdiction, under the form of an appeal or writ of error, to review a decision of a circuit court upon a writ of *habeas corpus* in the case of a person "alleged to be restrained of his liberty in violation of the constitution or of any law or treaty of the United States." Such an appeal was given by the act of February 5, 1867, ch. 28, 14 stat. 385, but it was taken away by the act of March 27, 1868, ch. 34, 15 stat. 44, and has never been restored.

SUPPLEMENT.

EX-PARTE, WM. L. ROYALL, No. 1. } No. 974.

EX-PARTE, WM. L. ROYALL, No. 2. } No. 975.

The brief filed in the above cases was prepared before our attention was called to the act, passed during the last days of the last session of Congress, restoring the jurisdiction of this Court upon appeals from the Circuit Court in *habeas corpus* cases. Acts 1884–5, ch. 353, p. 437. This act completely disposes of the argument made as to the jurisdiction of the court in such appeal cases.

We, however, contend that these cases come within the rule in the case of Ex-parte Crouch, 112 U. S., 178, cited in the brief filed.

But, conceding the jurisdiction for the purpose of discussing the cases upon their merits, we submit that a license to do a certain thing is a personal privilege which the State may grant or withhold at pleasure; and to the granting of which, she may annex any conditions she may think proper, and therefore the license fee which she requires is not a tax. But this question having been discussed in the case of *William L. Royall* vs. *The State of Virginia*, we refer to and adopt the brief in that case as an argument in this; and, though still insisting on the points there contended for, we will suppose, for the sake of argument, that the license fee required to practice in coupon cases is a tax on the securities of the State.

The Court has never passed upon the direct question of the power of the State to tax its outstanding obligations.

The question has never been before the Court; but it is submitted that nothing can be more clear than that she has such a power, when the securities she seeks to tax are in the hands of those residing within her jurisdiction. The case of *Hartman* vs. *Greenhow*, 102 U. S., p. 672, is the authority relied on to sustain the contrary doctrine; but so far from sustaining it, the Court expressly said that it was not necessary in that case to consider the question. See *Murray* v. *Charleston;* the court asked the question: "Is there property, which consists in the promise of a State, or the municipality of a State, beyond the reach of taxation? We do not affirm this. A State may undoubtedly tax any of its creditors within its jurisdiction for the debt due to him," etc. (96 U. S. 432.) A Government security is so much property in the hands of the holder. That all property within the jurisdiction of a State, is subject to the sovereign right of taxation, is perfectly clear, unless the State, by a special contract, has exempted it from taxation. It would be difficult to show that she had done so in the present instance. True, she went upon the market to borrow money; she entered into a contract, and gave her promises to pay, but neither tacitly nor expressly did she surrender her right to tax these securities when they should be in the hands of residents within her jurisdiction. It is the continual practice of the government to sell lands to individuals. She enters into a contract with the individual, and for so much money, conveys to him so much land, to be his in fee simple absolute; but does any one doubt her right to levy taxes on this land? Does any one hold that by taxing this land she imparis the obligation of her contract? Has she, by entering into this contract, surrendered her right to tax the land? She does not expressly reserve the right to tax it,

because, to borrow an idea from Seneca, there are some things so obvious that they need not be expressed; and that a State has the right to impose a tax on all property within her jurisdiction, is, we submit, one of them.

A State security is property, just as land is. Both have been granted by the State to the individual. The State has entered into a contract, and received a valuable consideration for each; and if it does not impair the obligation of the contract to tax the one, it is difficult for us to perceive how it impairs it to tax the other. This power to impose and collect taxes is a neccessary and indispensable incident of every government. A government affords protection to all property, whether lands or bonds, within its jurisdiction; and, therefore, all property—government securities as well as land—should pay a tribute for the protection it enjoys. "However absolute the right of an individual may be, it is still in the nature of that right, that it must bear a portion of the public burdens, and that portion must be determined by the legislature." 4 Peters, p. 561; *Providence Bank* vs. *Billings and Pitman*. Having thus shown, both by reason and authority, that a State's security are taxable when held by those within her jurisdiction, *a fortiori* may the person who deals in them be taxed.

But it is held that the statute imposing this tax is in conflict with Chap. X., Sec. 1, of the Constitution of Virginia, providing that taxes shall be equal and uniform. It is scarcely necessary to say that this equality and uniformity do not apply to license cases. *Ex-parte* Robinson, 12 Nevada, 263; *Youngblood* vs. *Sexton*, 32 Mich., 406; *Gatlin* vs. *Tarboro'*, 74 N. C., 119; Slaughter's Case, 33 Gratt., 767.

It is impossible to make this tax equal and uniform, though it should be as near so as possible; and when, as in the present instance, the same license fee is required of every person who engages in the particular business, it is not ob-

noxious to the charge of being unequal and not uniform. *Ex-parte Robinson, supra.* But it is submitted that this Court will not consider this charge of inequality, for it expressly held in *Jackson* vs. *Lamphire* (5 Peters, U. S., p. 280), that " this Court has no authority, on writ of error from a State court, to declare a State law void on account of its collision with the State Constitution."

In ex parte Yerger, 8 Wall. 85, 103, it was held "that, in all cases where a circuit court of the United States has, in the exercise of its original jurisdiction, caused a prisoner to be brought before it, and has, after inquiring into the cause of detention, remanded him to the custody from which he was taken, this court, in the exercise of its appellate jurisdiction, may, by the writ of *habeas corpus* aided by the writ of *certiorari*, review the decision of the circuit court, and if it be found unwarranted by law, relieve the prisoner from the unlawful restraint to which he has been remanded. The jurisdiction is acquired by this court in such a case through its own writ of *habeas corpus*, and until that is issued, there is no power to proceed." See also *Burford's case*, 3 *Cranch*, 448; *Ex parte Bolman & Swartout*, 4 *Cranch*, 75; *Ex parte Metzgar*, 5*th Howard*, 176.

It is useless to pursue the subject further, in any respect in which the cases are presented; the court is without jurisdiction.

Walter R Staples
R A Claiborne, Attys for Def'a in Err

WILLIAM L. ROYALL,
vs.
THE STATE OF VIRGINIA. } No. 1010.

In Error to the Supreme Court of Appeals of Virginia.

STATEMENT.

An information was filed against plaintiff in the Hustings Court of the City of Richmond for practicing law without having first procured a license. He pleaded a tender of genuine coupons, clipped from the bonds of the State and money to the amount of his license tax and fee, to the treasurer and commissioner of the revenue, and their refusal to grant him a license, as a defence to the indictment. The court held the plea bad, and he was convicted and fined. He applied to the Supreme Court of Appeals for a writ of error, which was refused, and he assigns the action of the Hustings Court and said refusal for error here.

ARGUMENT.

The acts regulating the granting of licenses for the exercise of any

privilege, for the licensing of attorneys at law, and imposing penalties for the failure to obtain the license required by law, are as follows:

"No person shall, without a license authorized by law, practice as an attorney." V. C. 1873, page 339, Sec. 60.

"Every attorney at law, in addition to being licensed, sworn and admitted to prosecute or defend actions or other proceedings in the courts of this Commonwealth, on the detainer of clients, shall obtain a revenue license; and no person shall act as attorney at law or practice law in the courts of this Commonwealth without a separate revenue license. A revenue license to practice law in any county or corporation shall authorize such attorney to practice in all the courts of this State without an additional license." V. C. 1873, page 339, section 61.

The 91st section of an act of March 15, 1884, is as follows:

"Every attorney at law, who has been licensed for less than five years, shall pay fifteen dollars; and on attorneys who have been licensed and practiced for five years and more, twenty-five dollars."

Section 86 of chapter 34 of the Code of 1873 is as follows:

"86. Any person who shall engage in or exercise any business, employment or profession, without a license, if a license be required by law, or shall in any manner violate the license or revenue laws of the State, if no specific fine is imposed for such violation, shall pay a fine of not less than thirty dollars nor more than one thousand dollars."

1. Be it enacted by the General Assembly, That every person or firm, partnership or association, express, telegraph, telephone, and every incorporated company, which now is or may be required to obtain a license in order to do business in this State, desiring to obtain such license, shall make application therefor, in writing, to the commissioner of the revenue of the county or corporation wherein such business is proposed to be conducted, or to the auditor of public accounts, in such cases as he is authorized by law to issue a license, in which application it shall be stated the nature of the business, the residence of the applicant, the place where it is proposed to conduct such business, the amount of the assessment prescribed by law as a condition precedent to the issuing of such license, accompanied by the certificate, in writing, by the treasurer of the county or corporation wherein such business is proposed to be conducted, stating that said amount, in gold or silver coin, United States treasury notes, or national bank notes, has been deposited with him by said applicant: provided, however, in such cases as the auditor of public accounts is authorized by law to issue licenses,

such deposit as herein provided for shall be made with him, at the time such application is presented, instead of with the treasurer.

2. Upon the receipt by the commissioner of the revenue or auditor, as the case may be, of an application of a person or firm, partnership or company, who has complied with the foregoing section, he shall endorse said application as follows: "I find the within application correct and in due form, and accompanied with the certificate in writing of the treasurer of the county or corporation, that the sum of ——— dollars in gold or silver coin, or United States treasury or national bank notes, has been deposited with the said treasurer, or that the same accompanied the application and was deposited with the auditor, as the case may be, to which endorsement he shall sign his name and file said application in his office, furnishing the applicant with a duplicate copy of the same. If it shall appear that all the provisions of this act shall have been complied with, then the court or person having authority to grant or issue such license may hear the application, and if in due form may grant such license: provided that in case such license shall be refused, such refusal shall be entered upon such application and the same returned to the applicant, who, upon presenting said application, endorsed with such refusal, to the officer with whom the deposit was made, shall have the same returned to him by the said officer.

3. When an application shall have been made and approved, and the amount assessed shall have been received by the proper collecting officer according to the provisions of this act, and his receipt therefor specifying in what currency such payment was made, shall be given then, and not until then, shall it be lawful for the court or person having authority under the law to grant such license. The order of court, when the license is obtained in court, and the license itself, when not obtained in court, shall specify that the assessment was made according to law, and that the amount assessed had been paid in money or currency, according to the provisions of this act.

4. No application for a license to do any business, or to follow any profession, trade or calling in this State, shall be made, and if made, shall not be considered except in pursuance of this act, and no such license shall be granted unless all the requirements of this act shall have been first complied with; and any license granted or obtained in violation of the provisions of this act shall be null and void, and the person or persons, firm or association, joint stock or incorporated company, which may obtain such license, and attempt to do business thereunder, shall

be deemed to violate the law, and shall be liable to all the forfeitures pains, and penalties for such violation, and in the same manner as if no such license had been obtained, and in addition thereto fined not less than fifty dollars nor more than five hundred dollars.

5. Any assessor, treasurer or other officer charged with any duty pertaining to the granting of licenses, who shall violate this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars.

6. The auditor of public accounts shall forthwith have prepared and furnished to commissioners of the revenue of this State blank forms of applications for licenses required to be made in writing by this act.

7. This act shall be in force from its passage.

The proposition advanced by plaintiff cannot be maintained.

Whenever the Legislature, within the limits of its constitutional power, requires a license for the privilege of exercising any profession, business or calling, and prohibits the exercise of such profession, business or calling without a license, it thereafter becomes a violation of law to engage in such profession, business or calling without the license. *Mabry et als. vs. Tarver*, 1 *Humph.* 94; *License Tax cases*, 5, *Wall.* 462; *Commonwealth vs, Collins*, 9 *Leigh*, 666; *Webber vs. Commonwealth*, 33 *Grat.* 898; *Chilvers vs. The People*, 11 *Mich.* 43.

We contend that the license is a privilege which the State may or may not grant, as it chooses, and for which it may require of the applicant, as a condition precedent, the payment of the amount of the license in money or any commodity at its pleasure. The State does not have a debt due or demand against the party desiring to engage in such profession, business or calling. He may or may not engage in the business at his pleasure, but after the State has prohibited its exercise without license, he must have the license to make the business lawful.

Unless he comes and asks the license the State can never have a debt due or demand against him; and when he does come, it places him under conditions. He must pay in money and not coupons.

But we are met with the assertion that this is a demand within the meaning of the funding acts, and the refusal to accept the coupon, violates the contract.

There is nothing due, there is no debt, there is no demand, until the license is granted. The State can collect nothing until the license is granted, and she refuses to grant it except for money. Suppose the State should declare her necessity for a loan, and to encourage her citi-

zens to invest in the loan, should require, as a condition precedent to the exercise of any profession, business or calling, that the applicant for the privilege should subscribe to and take a certain amount of said loan, according to some graduated scale, will it be contended that coupons could be subscribed to that loan, and the privilege exacted?

The State has made the practice of law a privilege, and required a license for that privilege.

In Mabry et als. vs. Tarver, 1 Humph. 94, Nelson, judge, said:

"As a portion of the taxes due in the case before us was from the keepers of stallions and jacks, and the exhibitors of shows, it is contended that so much is unconstitutional. The act of 1835, ch. 15, sec. 4, prohibits in general the keeping of those animals for profit in the propagation of stock, and the exhibition of shows, but concedes the privilege of doing so to all those who shall apply for a license and pay for the privilege the amount specified in the act. The constitution in express terms confers upon the Legislature the power to tax privileges. But, it is contended, that the avocations in question are not in themselves, and in their nature, privileges. They are not so, indeed, unless prohibited in general by the law; but when so prohibited, the license or permission to pursue them becomes a privilege, and the subject of the taxing power of the Legislature. The 7th section of the 11th article, which prohibits the Legislature from granting privileges, immunities or exemptions other than such as may be by the same law extended to any member of the community who may be able to bring himself within the provisions of such law, shows the sense in which the convention use the term. It is the license or permission upon the specified terms, to do that which in general is prohibited. Such license or permission, as has been said, becomes a privilege and the subject of taxation. But it is said, that to concede to the Legislature unlimited power to prohibit particular pursuits and avocations in themselves indifferent or useful, and then to license them on specified terms, and tax the privilege, might make the pursuit of farming itself a subject of taxation. The danger is somewhat remote of the indiscreet exercise of such a power, but if it were to occur the corrective would have to be applied by the people themselves in the exercise of their elective franchise.

"There is a clear distinction recognized between a license granted or required as a condition precedent before a certain thing can be done, and a tax assessed on the business which that license may authorize one

to engage in. A license is a right granted by some competent authority to do an act which, without such authority, would be illegal. A tax is a rate or sum of money assessed upon the person, property, &c., of the citizen." *Home Ins. Co.* vs. *Augusta*, 50 Geo. 530, 537.

"The object of a license is to confer a right that does not exist without a license. And, consequently, a power to license involves, in the exercise of it, a power to prohibit under a fine or penalty without license. Otherwise a license would be an idle ceremony—giving no right, conferring no privilege, and exempting from no pain or penalty. If the right existed previous to the law requiring the license, it would not exist afterward without such license. The fact that a license is required to do an act is of itself a prohibition of such act without a license." *Chilvers* v. *The People*, 11th Mich. 43.

The above case was a violation of a city ordinance prohibiting ferries without license.

"A license is a privilege granted by the State, usually on payment of a valuable consideration, though this is not essential. To constitute a privilege the grant must confer authority to do something which, without the grant, would be illegal; for if what is to be done under the license is open to every one without it, the grant would be merely idle and nugatory, conferring no privilege whatever. But the thing to be done may be something lawful in itself, and only prohibited for the purposes of the license—that is to say, prohibited in order to compel the taking out of a license. This is always the case where that which is licensed was not unlawful at the common law." *Cooley on Taxation*, p. 406.

We submit that the acts *supra* requiring the license to be paid in money as a condition precedent to the exercise of the privilege are not repugnant to the 10th section of article I of the Constitution of the United States.

But conceding for the purposes of this argument that we are wrong in the view maintained above, the plaintiff's position is still untenable. He does not claim that the acts requiring the license to be obtained, and punishing those practicing without license independent of the other acts, violate any obligation of the State. He does not question the power of the General Assembly to pass these acts, but claims that the subsequent legislation forbidding the receipt of coupons for license taxes vitiate them, and confers upon him the right to practice without the license, after a tender of coupons.

The reasoning by which he arrives at his conclusion is not logical. He says: "I do not argue that if there were no statute of the State commanding her officers to refuse her coupons, I might still pursue my business after tendering the coupons, without a license. *By no means.* In that case it may be that I would have to proceed against the officer, either by *mandamus*, to compel him to issue a license, or for damages in keeping me out of my business. But that is not the case under consideration. In the case under consideration the State has ordered her officer to refuse the coupon, and the question is whether that act is a valid act."

He then says: "I cannot be said, therefore, to have violated any criminal law of the State, since the pretended statutes, which command a refusal of the coupons, and which forbid me to prosecute my business without a license, are not statutes at all. They do not exist."

This cannot be maintained upon principle or authority. Where the State has passed an act within the limits of its constitutional power, no subsequent invalid and unconstitutional legislation can affect in any way the prior valid statute. If the plaintiff's position as to the unconstitutionality of the subsequent legislation is correct, to use the incisive language of Justice Matthews, in Poindexter vs. Greenhow. [114 U. S. 305.] "The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, has not done."

We have, therefore, a valid law, of the State of Virginia, which requires that, before an attorney shall practice law, he shall obtain a license. We also have a valid law which imposes a fine upon any attorney who practices law without a license. The plaintiff chose to practice law without a license, and has been prosecuted and fined under these laws.

His only defence was that he tendered coupons to the officers, whose duty it was to issue the license, and they refused to accept them. Suppose he had tendered money and the license had been refused, this would not authorize him to practice law without it. If he had a right to the license upon the tender of coupons in payment, the law affords him a remedy to enforce that right, which this court has held to be sufficient and substantially equivalent to the one in existence at the time of the passage of the act authorizing the coupons. *Antoni* vs. *Greenhow*, 107, U. S. 769.

His tender does not satisfy the requirement that he shall have a license. This license authorizes him to practice law in all the courts of the Commonwealth.

Under his claim every court in which he offered to practice would be compelled to enter into an investigation as to the facts and circumstances of the tender and its validity. The license is required as an evidence of the lawful exercise of the privilege. The license laws of the State of Virginia are applied to a great number and variety of professions, business callings and pursuits. In many instances the license, although issued by the local authorities of only one county or city, authorizes the exercise of the privilege in every portion of the State. The necessity for the license is apparent. Great inconvenience and loss would result to the State without it.

The law requires it. If the officer refuses to issue the license contrary to law, an ample remedy is afforded the applicant to compel him (the officer) to do his duty. One violation of law does not authorize another.

In either view we have presented the case, the plaintiff was properly convicted, and the judgment of the hustings court of the city of Richmond should be affirmed.

Walter P Staples
R A Ayres, Atty Gen'l of Va

R. B. CHAFFIN
vs.
WILLIAM TAYLOR. } No. 1011.

In Error to the Supreme Court of Appeals of the State of Virginia.

STATEMENT.

The plaintiff tendered coupons and money to the amount of his tax-bill due the State. The defendant, as treasurer of Henrico county, refused to accept the coupons, and levied upon plaintiff's horse. Plaintiff then instituted an action of trespass against the defendant in the circuit court of the county of Henrico, to which the defendant pleaded in justification that, as an officer of the State, he had levied for a tax-bill past due; the plaintiff replied the tender of genuine coupons and money to the amount of the taxes prior to the levy. The defendant demurred to the replication, which was sustained, and judgment rendered in his favor. The plaintiff applied to the supreme court of appeals of Virginia for a writ of error; which was refused. He then

appealed to this court, where the judgment of the supreme court of appeals of Virginia and the circuit court were reversed and the case remanded—114 U. S. 309.

When the case was again called in the circuit court of Henrico the defendant filed a rejoinder, that the plaintiff had not tendered the coupons for verification under the act of January 14, 1882, accompanied by the payment of the taxes in money, but had demanded a receipt in full for the tax-bill upon the tender of the coupons; that he had at all times been ready to receive the coupons for verification under the said act of January 14, 1882. The plaintiff objected to the filing of the rejoinder and demurred thereto, but the court overruled the demurrer and gave judgment for the defendant. The plaintiff applied to the supreme court of appeals again for a writ of error, which was refused, and he prosecutes his appeal here to reverse the judgment of the State courts.

ARGUMENT.

The effect of the decision of the court upon the first appeal was to overrule the demurrer of the defendant to plaintiff's replication, when, according to the practice in the State courts, the defendant was entitled to file his rejoinder. The plaintiff demurred to the rejoinder, and his demurrer was overruled. This presents the point for decision here.

Can the State require proof of the genuineness of the coupons before they are received for taxes?

Does the act requiring them to be proven avoid their quality as a legal tender for taxes, until they are so proven?

The plaintiff contends that the decision in Poindexter vs. Greenhow, (114 U. S. p. 305) is conclusive upon these points. Whilst we concede that the opinion of the court in that case goes a long way toward sustaining his view, we confidently assert that the question as to the genuineness of the coupon did not arise. The agreed state of facts in that case expressly admitted the coupons to be genuine, and it did not become necessary to decide whether if upon the tender their genuineness was disputed, the tender was good without the proof.

This is the view taken by the court below, as appears by the following extract from the record:

"* * * * And the court, having maturely considered the matter of law arising upon the plaintiff's demurrer to the defendant's rejoinder, is of opinion that the judgment and opinion of the Supreme Court of

the United States in this cause, does not preclude and forbid the defendant from pleading the act of Assembly of January 14, 1882, pleaded by him in his said rejoinder, and that the Constitution of the United States does not make said act of Assembly null and void as a defence to the defendant for his said alleged trespass."—*Fol* 10.

We contend that it is a necessary precaution on the part of the State to require that the coupons be proven genuine before her officers receive them, for the protection of her treasury and revenues.

The right of the coupon holder to have the coupon received for his taxes has been affirmed by this court, it is true, but the court has not, in a case involving that point directly, decided that the State could not require proof that the coupon was genuine before permitting her officer to receive it for taxes.

In Antoni vs. Greenhow (107 U. S. 769), this court decided, that when the holder sought to pay his taxes in coupons and they were refused, he could only proceed under the act of January 14, 1882, to compel the officer to receive them. The court sustained the act, although it required the taxes to be paid in money when the tender was made without reference to whether *the coupon was in fact genuine*; and in case of refusal, required the officer to levy, (and the act was assailed as being repugnant to the contract clause of the constitution.)

To hold, when the officer proceeds to levy, that he is a trespasser, leaves the validity of the act to be determined by the attitude of the parties. Where the tax-payer proceeded against the officer the act would be valid, but where the officer proceeded against the tax-payer it would be unconstitutional.

The coupons are not refused. *They are received*, and, when proven genuine, are applied in payment of the taxes, and the money refunded. The State does not command the officer to *refuse* the coupons, but requires him to receive and apply it in payment of the taxes when ascertained to be genuine, in the mode prescribed by law.

The preamble to the act of January 14, 1882, is as follows:

"Whereas, bonds purporting to be bonds of this Commonwealth issued by authority of the act of March 30, 1871, entitled an act to provide for the funding and payment of the public debt, and under the act of March 28, 1879, entitled an act to provide a plan of supplement of the public debt, are in existence without authority of law; and, whereas, other such bonds are in existence which are spurious, stolen or forged, which bonds bear coupons in the similitude of genuine coupons,

receivable for all taxes, debts and demands due the Commonwealth; and, whereas, the coupons from such spurious, stolen or forged bonds are received in payment of taxes, debts and demands; and, whereas, genuine coupons from genuine bonds, after having been received in payment of taxes, debts and demands, are fraudulently re-issued and received more than once in such payments; and, whereas, such frauds on the rights of the holders of the aforesaid bonds impairs the contract made by the Commonwealth with them—that the coupons thereon should be received in payment of all taxes, debts and demands due the said Commonwealth, and at the same time defrauds her out of her revenues—therefore, for the purpose of protecting the rights of said bondholders and of enforcing the said contract between them and the Commonwealth, and of preventing frauds in the revenue of the same."

We submit that the declaration of the General Assembly in the preamble to the act, in the absence of anything to the contrary, must be accepted as true. Antoni v Greenhow (107 U.S. 769)

Thus we have the State's treasury in imminent danger of being flooded with coupons that are counterfeit and spurious. To avert that danger and protect her treasury, the State passed the act regulating the mode in which coupons should be received, which, as amended by act of March 12, 1884, is as follows:

§ 1. Be it enacted by the General Assembly of Virginia, That whenever any tax-payer, or his agent, shall tender to any person whose duty it is to collect or receive taxes, debts, or demands due the Commonwealth, any papers or instruments in print, writing or engraving, purporting to be coupons detached from bonds of the Commonwealth, issued under the act of 1871, entitled an act to fund the public debt, or from the bonds of the Commonwealth, issued under the act of March 28, 1879, entitled an act to provide a plan of settlement of the public debts; in payment of any such taxes, debts and demands, the person to whom such papers are tendered, shall receive the same, giving the party tendering a receipt stating that he has received the same for the purpose of identification and verification.

2. This act shall be in force from its passage.

2. He shall at the same time require such tax-payer to pay his taxes in coin, legal tender notes, or national bank bills, and, upon payment, give him a receipt for the same. In case of refusal to pay, the taxes due shall be collected as all other delinquent taxes are collected.

3. He shall mark each paper as coupons so received with the initials

of the tax-payer from whom received, and the date of receipt, and shall deliver the same, securely sealed up, to the judge of the county court of the county, or hustings court of the city, in which such taxes, debts or demands are payable. The tax-payer shall thereupon be at liberty to file his petition in said county court against the Commonwealth. A summons to answer which petition shall be served on the Commonwealth's attorney, who shall appeal to and defend the same. The petition shall allege that he has tendered certain coupons in payment of his taxes, debts, and demands, and pray that a jury be impanneled to try the question as to whether they are genuine, legal coupons, which are legally receivable for taxes, debts, and demands. Upon this petition an issue shall be made in behalf of the Commonwealth, which shall be tried by a jury, and either partp shall have a right to exceptions on the trial, and of appeal to the circuit court and court of appeals. If it be finally decided in favor of the petitioner, that the coupons tendered by him are genuine, legal coupons, receivable for taxes, and so forth, then the judgment of the court shall be certified to the treasurer, who, upon receipt thereof, shall receive said coupons for taxes and shall refund the money before then paid for his taxes by the tax-payer, out of the first money in the treasury, in preference to all other claims.

4. Whenever any tax payer shall apply to any court in this Commonwealth for a mandamus to compel any person authorized to receive or collect taxes, debts or demands due the Commonwealth, to receive coupons for taxes, it shall be the duty of such person to make return to said mandamus, that he is ready to receive said coupons in payment of such taxes, debts, and demands, as soon as they have been legally ascertained to be genuine, and the coupons which by law are actually receivable. Upon such return, the court before whom the application is made shall require the petitioner to pay his taxes to the tax collector of his county or city, or to the treasurer of the Commonwealth; and upon filing the receipt for such taxes in such court, the said court shall direct the petitioner to file his coupons in such court, which shall then forward the same to the county court of the county, or hustings ~~court~~ Court of the city, where such taxes are payable, and direct said court to frame an issue between the petitioner as plaintiff, and the Commonwealth as defendant, as to whether the coupons so tendered are genuine coupons, legally receivable for taxes. On the trial of the cause, the attorney for the Commonwealth in the lower courts, and the attorney-general in the

supreme court of appeals, shall appear for the Commonwealth, and require proof of the genuineness and legality of the coupons in issue. Either party shall be entitled to exceptions, and an appeal to the circuit court and the supreme court of appeals on the trial of this issue. If the decision be finally in favor of the petitioner, the mandamus shall issue requiring the coupons to be received for said taxes, and so forth, and they shall be so received; and on the certificate of such judgment, the treasurer of the Commonwealth shall forthwith refund to the tax-payer the amount of currency or money before then paid by him for taxes, out of the first money in the treasury, in preference to all other claims.

5. This act shall be in force from its passage.

The suit against the officer is only a remedy to redress the deprivation of a right claimed under the contract. The State, by directing the officer to levy when the money does not accompany the tender, takes away that remedy and makes the levy lawful.

The State says you must not sue my officer; you must proceed in the manner prescribed by law.

The right to tender the coupons and stand upon that tender is, in itself, a remedy for the enforcement of the contract.

The State has chosen to take away these remedies for the enforcement of the rights of the coupon holder under his contract, and has substituted a remedy which she declares is adequate to enforce his rights—equivalent to the remedy taken away, and at the same time protects herself. That the remedy may be changed and another entirely different substituted, provided it affords the creditor an adequate means of enforcing his obligation, is too well established for discussion. *Bronson* vs. *Kinzie*, 1 Howard, 311; *Tennessee* vs. *Sneed*, 96 U. S. 69; *The R. R. Co.* vs. *Tennessee*, 101 U. S. 337; *The R. R. Co.* vs. *Alabama*, 101 U. S. 832; *Stone* vs. *Miss.*, 101 U. S. 814; *Cooley's Const. Lim.* 361.

We submit that the State has given an effective remedy in the act *supra*, and the tax-payer must proceed as prescribed therein.

The judgment of the circuit court of Henrico county, overruling the objection and demurrer to the rejoinder, should be affirmed.

Walter R Staples
P A Aglus, Attys

WILLIAM H. SANDS,
vs.
E. G. EDMUNDS, Treas. &c. } 1009.

In error to the Supreme Court of Appeals of the State of Virginia.

The plaintiff in error, Sands, an attorney at law, paid the defendant, Edmunds, who is treasurer of Fauquier county, Virginia, fifteen dollars and seventy-five cents, the amount of his license tax for the privilege of practicing law, and at the same time tendered the said treasurer a coupon for fifteen dollars and demanded that the treasurer should receive said coupon along with said lawful money for the purpose of identification and verification under the act of January 14, 1882, entitled "an act to prevent fraud upon the Commonwealth and the holders of her securities in the collection of her revenues."

The said treasurer refused to receive the coupon for any purpose, and plaintiff presented his petition to the circuit court of Fauquier county to compel the officer to receive the coupon. The prayer of his petition was denied, and he applied to the Supreme Court of Appeals of Virginia for a writ of error, which was refused, and he seeks to reverse the decisions of the State courts by his writ of error here.

ARGUMENT.

The question here is as to the validity of the acts of the General Assembly of Virginia, approved February 7, 1884, entitled "an act to regulate the granting of licenses for the exercise of any privilege," and the 112 section of an act of the General As-embly of Virginia, approved March 15, 1884, entitled "an act to provide for the assessment of taxes on persons, property," etc., which forbids the receipt of coupons in payment for licenses and require them to be paid in money.

The same question has been discussed in the case of W. L. Royall vs. The State of Virginia, and the acts referred to above are there cited. We therefore refer to and adopt the brief in that case as an argument here.

The judgment of the State court should be affirmed.

Walter R Staples
R A Ayres, Atty Genl of Va

IN THE

Supreme Court of the United States.

ROBERT P. BARRY
v.
E. G. EDMUNDS. } No. 973.

WILLIAM L. ROYALL,
v.
THE STATE OF VIRGINIA, } No. 1010

EX PARTE ROYALL, No. 1. } No. 974
EX PARTE ROYALL, No. 2. } No. 975

CHAFFIN
v.
TAYLOR. } No. 1011

EX PARTE WM. H. SANDS. } No. 1009

MOTION TO ADVANCE.

1018
1116
1116
1101

IN THE

Supreme Court of the United States.

ROBERT P. BARRY
v.
E. G. EDMUNDS. } No.

WILLIAM L. ROYALL,
v.
THE STATE OF VIRGINIA, } No.

EX PARTE ROYALL, No. 1. } No.
EX PARTE ROYALL, No. 2. } No.

CHAFFIN
v.
TAYLOR. } No.

EX PARTE WM. H. SANDS. } No.

MOTION TO ADVANCE.

I respectfully move the court to advance the above named cases for the reasons stated, and order them to be argued at as early a day as will suit its convenience.

BARRY V. EDMUNDS.

I move to advance this case under rule 32. The plaintiff in error owed the State of Virginia $59 for taxes. He tendered the

Constitution of the United States, in order that I may be relieved from deciding whether I will endure imprisonment or submit to an extortion that I do not believe the State has a right to make.

Ex Parte Royall, No. 1.

By the 65th section of the act of the Virginia Legislature of March 15th, 1884 (Acts 1883–4, page 590), it is provided that no person shall sell the State's tax-receivable coupons without first paying, in addition to any general license tax that he may have paid, a special license tax of $1,000, and in addition thereto a special tax of twenty per cent. upon the face value of the coupons sold.

Deeming this law to be an impairment of the obligation of the State's contract, Royall sold coupons without having paid this special license tax. The grand jury of the city of Richmond found an indictment against him, on which he was arrested. He was released on bail from term to term, until in May, 1885, he applied to the Circuit Court of the United States for the Eastern district of Virginia for a writ of *habeas corpus* to discharge him from his imprisonment, on the ground that he was held in violation of the Constitution. The Circuit Court refused to award this writ, but under the act passed at the last session of Congress, approved March 3d, 1885, it allowed him an appeal to this court.

Ex Parte Royall, No. 2.

By sections 90 and 91 of the act of March 15th, 1884, it is provided that attorneys at law who have been licensed to practice law less than five years shall pay a license tax of fifteen dollars, and those who have been licensed more than five years twenty-five dollars, and that such license shall entitle the attorney paying it to practice law in all the courts of the State. But the said 91st section provides further, that no attorney shall bring any suit under the act of January 14th, 1882, to recover back from the State money paid for taxes for which coupons had been tendered, unless he pay in addition to said license tax a further special license tax of $250 for the privilege of bringing such coupon suits.

Conceiving this to be a law that impaired the obligation of the

State's contract, Royall, who had paid the general license tax of a lawyer, brought a coupon suit under said act of January 14th, 1882, without having first paid said special license tax of $250.

The grand jury of the Hustings Court of the city of Richmond found an indictment against him for this, on which he was arrested. At the beginning of the last term of this court Royall applied here for a writ of *habeas corpus* to discharge him from this arrest. The court decided that he was entitled to the writ, but, before the rule issued, it directed the question to be argued whether it had jurisdiction to award it. That question was argued, but the court adjourned for the term before it was decided.

In May last, after this court had adjourned, Royall applied to the Circuit Court of the United States for the Eastern district of Virginia for a writ of *habeas corpus*, but that court refused to award it, and allowed him an appeal to this court.

As Royall was engaged from the time he was indicted in endeavoring to have the constitutionality of both of the above laws passed upon, the authorities of the State very kindly and considerately forbore to press either prosecution against him, awaiting the judgment of this court upon the constitutional questions involved, and Royall has been bailed from term to term in each case. But the authorities have now notified him that they have delayed the prosecution as long as they think it advisable to do, and they shall at once resume the prosecution, unless this court takes the cases up at this term and disposes of them. I therefore move the court to advance these two cases.

CHAFFIN v. TAYLOR.

This case has been to this court before, and is reported in 114 U. S. R. at page 309.

The mandate of this court was carried to the Circuit Court of Henrico county, and a day set for the trial of the cause. The defendant came forward with a replication, setting up the same defence that this court had already held to be no defence. The plaintiff objected to the defendant being allowed to make this defence, but the court entertained it and gave judgment against the plaintiff.

Along with this motion I present another copy of this record,

with a motion for summary proceedings to compel the judge of Henrico Circuit Court to carry out the order of this court. If summary proceedings are not awarded, I ask the court to advance this writ of error, and dispose of the case as soon as its convenience will permit.

EX PARTE WM. H. SANDS.

Sands is an attorney-at-law, regularly licensed to practice law in all the courts of Virginia. He tendered one of the State's tax-receivable coupons in payment of his license tax, according to the provisions and requirements of the act of January 14th, 1882, for identification and verification, but the collector refused to receive it for that or any other purpose. He refused to receive it because the Legislature of Virginia has passed an act forbidding the receipt of coupons for license tax under any conditions whatever. Sands applied to the Circuit Court of Fauquier for a *mandamus* to compel the collector to receive the coupon for identification and verification under the provisions of the act of January 14th, 1882, but the said court held that the act of the Legislature forbidding the receipt of coupons for license taxes was a constitutional act, and it refused the *mandamus*. This judgment was affirmed by the Supreme Court of Appeals of the State.

As I understand the decision of this court in the case of *Moore* v. *Greenhow*, 114 U. S. R. 338, it decided that the act of the Legislature forbidding payment of license taxes with coupons is void. I cannot see what else the court could have meant by saying that the plaintiff was "remitted to his remedy under the act of January 14th, 1882." However, the court did not say this in terms, and the Virginia courts, inferior and superior, understand this court's decision differently from what I understand it, and they, therefore, still hold the act forbidding license taxes to be paid with coupons, constitutional and valid. It is, therefore, requisite that this court shall state its meaning more distinctly before taxpayers can get the benefit of its decision, if it has decided what I understand it to have decided.

I understand it to be the practice of the court to advance cases which have been once decided and which come back here afterwards for the reason that full effect has not been given to the

decision. If this be its practice, all these cases would seem to come clearly within the scope of the rule, and all of them ought to be advanced as being in the nature of "unfinished business."

The Virginia coupon cases were advanced last spring upon the motion of the State of Virginia through her Attorney-General. In that motion the State said to this court: "It is of the utmost consequence to the collectors of the State's taxes for them to know whether the State can protect them in enforcing collection of her revenues. * * * It is obvious, that so long as the decisions of Judge Bond in the cases of *Hamilton* v. *B. & O. R. R.* and *Smith* v. *Greenhow* remain in force, the State of Virginia is fatally crippled in the collection of her revenues and may be reduced to absolute insolvency."

These statements were then thought by the court to contain sufficiently potential reasons for advancing the cases. If they were potential then, they are just as potential now, for it is obvious that the decisions have not gone far enough to clear up all the difficulties, and that further decisions by the court are necessary.

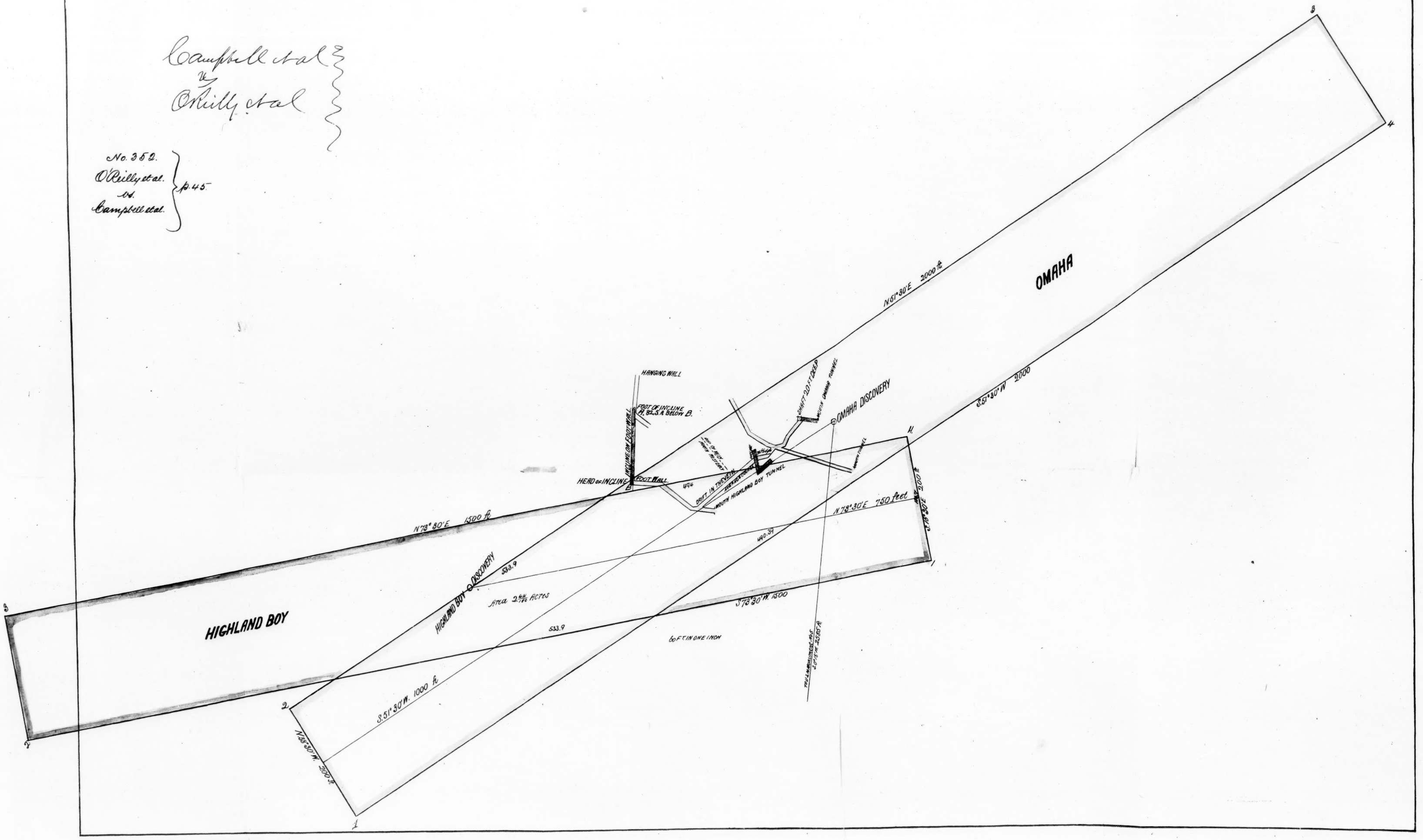
WM. L. ROYALL,
For the Motion.

District Courts
3d Jud. Distrct
of Utah Territy

"Exhibit 2."

Campbell et al
vs
O'Reilly et al

No. 352.
O'Reilly et al.
vs.
Campbell et al.
p. 45



"Exhibit G" { District Court Third Judicial District Utah Territory

DISCRIPTION & BOUNDARIES OF AREA IN CONFLICT

Commencing at post No. 2 of the Official Survey of the Omaha Claim Lot 141, Thence S. 35°45' E. 16 3/10 feet. Thence N. 73°30' E. 554.1, Thence N. 54°15' E. 554.1 Thence N. 16°30' W. 16 3/10 feet. Thence S. 73°30' W. 560 feet to place of beginning, containing 2 76/100 Acres.

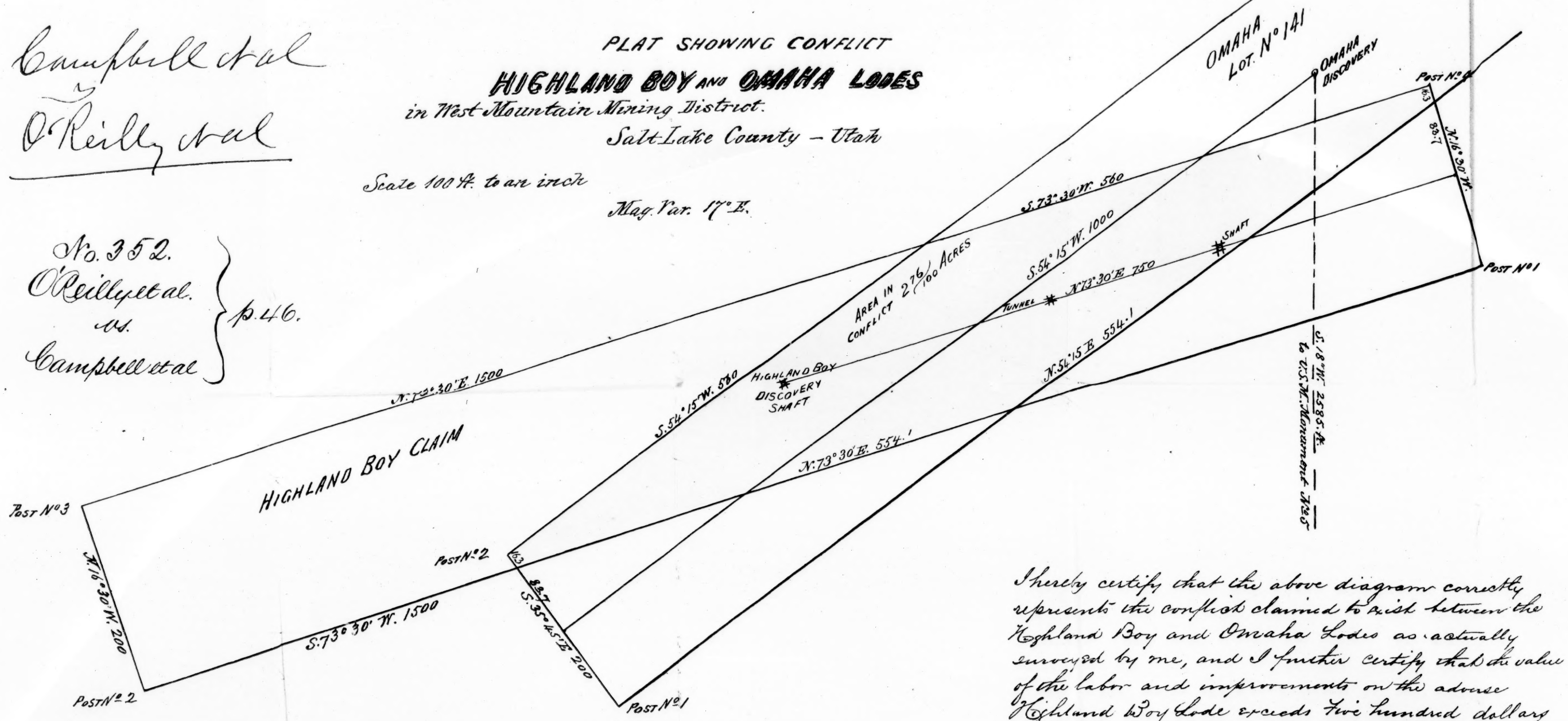
Campbell et al
vs
O'Reilly et al

No. 352.
O'Reilly et al.
vs.
Campbell et al
} p. 46.

PLAT SHOWING CONFLICT
HIGHLAND BOY AND OMAHA LODES
in West Mountain Mining District.
Salt Lake County – Utah

Scale 100 ft. to an inch

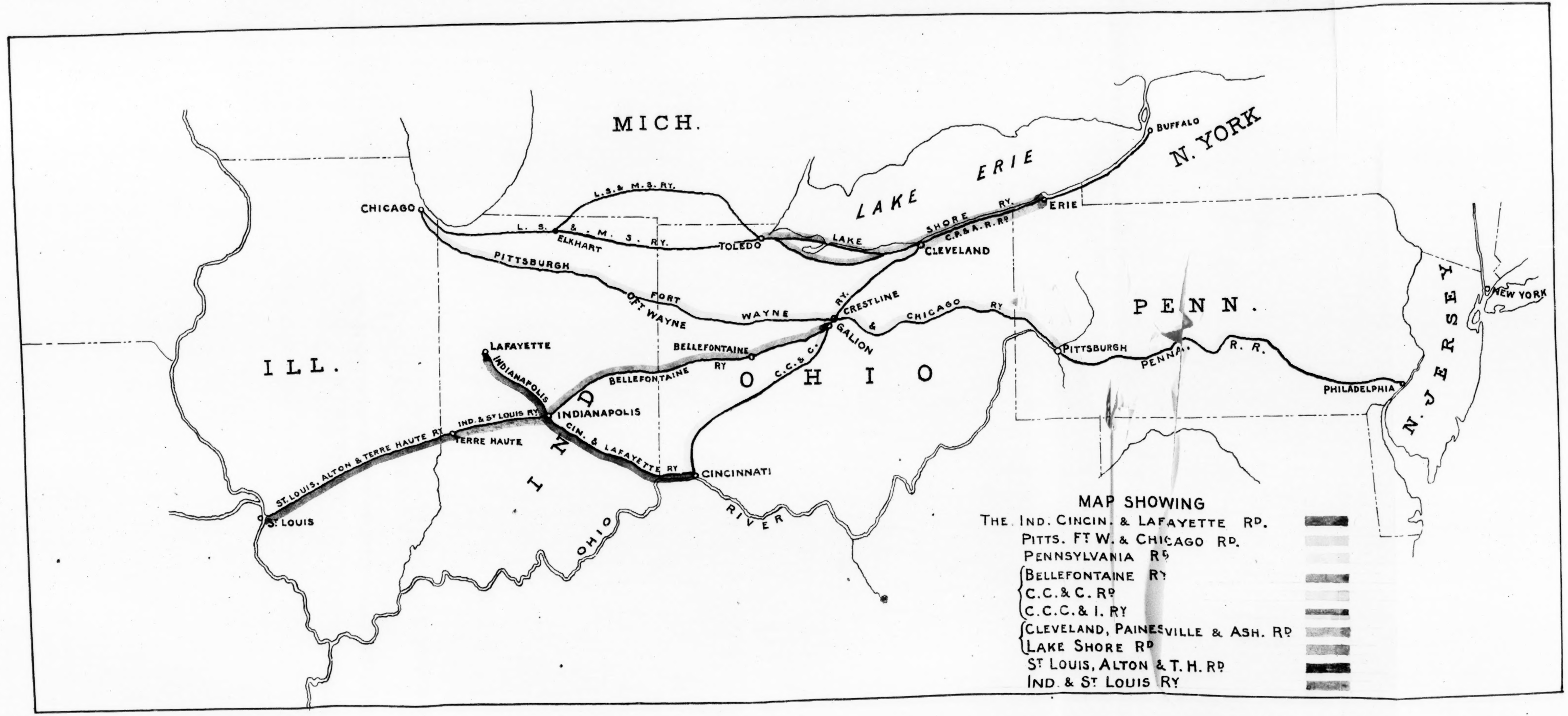
Mag. Var. 17° E.



I hereby certify that the above diagram correctly represents the conflict claimed to exist between the Highland Boy and Omaha Lodes as actually surveyed by me, and I further certify that the value of the labor and improvements on the adverse Highland Boy Lode exceeds Five hundred dollars

Frank Eastman
Dep. U.S. Mineral Surveyor

Bingham April 4th 1879


MICH.
ILL.
OHIO
INDIANA
PENN.
N. JERSEY
N. YORK
LAKE ERIE
CHICAGO
L. S. & M. S. RY.
ELKHART
TOLEDO
LAKE SHORE RY.
C.P.& A.R.Rp
ERIE
BUFFALO
CLEVELAND
PITTSBURGH
FORT WAYNE
WAYNE
CRESTLINE
GALION
& CHICAGO RY
PITTSBURGH
PENNA. R. R.
PHILADELPHIA
NEW YORK
LAFAYETTE
INDIANAPOLIS
BELLEFONTAINE RY
C.C.C. & I.
BELLEFONTAINE
IND. & ST LOUIS RY
INDIANAPOLIS
ST. LOUIS, ALTON & TERRE HAUTE RY
TERRE HAUTE
CIN. & LAFAYETTE RY
CINCINNATI
ST. LOUIS
OHIO RIVER
MAP SHOWING
THE IND. CINCIN. & LAFAYETTE RD.
PITTS. FT W. & CHICAGO RD.
PENNSYLVANIA RD
BELLEFONTAINE RY
C.C. & C. RD
C.C.C. & I. RY
CLEVELAND, PAINESVILLE & ASH. RD
LAKE SHORE RD
ST LOUIS, ALTON & T. H. RD
IND. & ST LOUIS RY